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judicially called, without prejudice to the reverser to use an order of redemption.

be forced to keep it dead in his hand, and suffer the wadsetter to enjoy the rents of his estate.

THE LORDS sustained the defence, That Charles Ross could not be decerned to remove after his consignation, of the sums in the wadset, upon the pursuer's requisition and charge.

1710. *November 10.*—IN the process of removing, at the instance of William Ross, as proper wadsetter of the lands of Littleallan, against Charles Ross granter of the wadset, the LORDS, July 25. 1710, found, That Charles Ross having, upon William Ross's requisition and charge for payment of the sum in the wadset made offer and consignation thereof under form of instrument, William Ross could not thereafter pass from his requisition and charge, and insist in the removing, albeit Charles Ross had used no order of redemption ;

William Ross reclaimed, and *represented*, That there being no offer of payment, nor consignation, before he insisted in his removing, he is not obliged to accept of the money until lawful premonition be made to him, in the terms of the contract. Whereupon the LORDS found, That the pursuer might pass from his charge, and insist in the removing, reserving to Charles Ross to use an order of redemption as accords, in the terms of the contract of wadset ;—albeit it was *alleged* for him, That though an infestment of wadset extinct by the wadsetter's premonition or requisition revives by his passing from the order, yet a charge of horning used upon the requisition cannot be so past from, Stair, Instit. Lib. 2. Tit. 10. § 22 ;—in respect it was *answered* for William Ross, That a requisition and charge have the same effect, Stair, Lib. 2. Tit. 1. § 4. ; Spottiswood, Tit. Assignation, Donaldson against Donaldson, see APPENDIX ; and the citation by Charles Ross out of Stair's Institutions must be understood where the wadsetter hath not given sufficient evidence of his passing from the charge, by making use of his infestments.

*Fol. Dic. v. 2. p. 354. Forbes, p. 434. 440.*

NO 12. 1739. *January 19.* ARBUTHNOT *against* LOCKWOOD and GIBBON.

A REAL creditor upon a bankrupt estate, having agreed with the debtor to accept of a certain sum in place of his whole claims, and the debtor having consigned the sum upon the creditor's refusal to implement the bargain, and thereupon having obtained interlocutor in his favour, declaring the creditor's claims upon the estate to be sopite and extinguished ; there ensued a competition upon the consigned sum among several parties to whom the said creditor was due sums of money, and who had arrested, some before and others after the said interlocutor. It was *objected* against the prior creditors, That the money belonged to the consigner before the interlocutor. The LORDS, notwithstanding

ng, preferred the prior arresters, being of opinion, That the supervening interlocutor was but declaratory.

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*Fol. Dic. v. 2. p. 354.*

\*\* Lord Kilkerran's report of this case is No. 2 p. 3077., *voce* CONSIGNATION.

1745. June 19.

CAMPBELL OF BALERNO *against* The CREDITORS of Auchinbreck.

SIR JAMES CAMPBELL of Auchinbreck was debtor to Ronald Campbell of Balerno, by an heritable bond for L. 7000 Scots; but 4000 merks thereof being paid, a discharge and renunciation was granted, effeiring to that sum, with a procuratory of resignation *ad remanentiam*.

Sixteen years after this, at an accounting between Sir James and Mr Ronald Campbell, advocate, son and heir of the original creditor, it appearing that the debt had, by posterior contractions, again swelled to the first sum, the discharge, which had never been registrated, was given up.

Mr Campbell produced his interest in a ranking of Sir James's Creditors, when it was *objected*, That his bond was in so far paid and given up, and the discharge was not a habile way to create to him an heritable security for a new sum.

*Pleaded* for Mr Campbell, This was a fair transaction; Sir James was then in good credit; and none of the competing creditors had, at that time, any infestments. His infestment could not be taken away by the discharge, which was a personal deed, 23d November 1627, Dunbar *contra* Williamson, No 9. p. 570. This obtains, with two exceptions, *imo*, If the renunciation be registrated, act 16. Par. 1617: *2do*, If there be intromission, by virtue of legal diligence, which extinguishes the right; but there is a difference betwixt that and voluntary payment, in which last case the debtor has it in his power, and ought to take a renunciation.

Granting the principal sum to have been diminished, it does not follow that the heritable right was so; and thus an adjudger, who had received a partial payment, was ranked for the whole sum in the adjudication, that he might draw effeiring thereto, so long as his draught was within the sum still due, 16th February 1734, Earls of Loudon and Glasgow *against* Lord Ross, No 23. p. 1414.; Mr Campbell must therefore prevail, if a personal obligation can be renewed by consent; and this is no more than is done every day in eiks to reversions; and a parallel case to this was decided, 21st December 1675, Clark *contra* Robertson, No 4. p. 9979.

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A creditor, by an heritable bond, granted a partial discharge and renunciation, which he afterwards retired on a further advance which he made of money. It having never been registrated, and there being no intervening real rights, the infestment was found to subsist for the whole annualrent.