No 92. vat was, or was not, at the granting of the bond, an enemy to the government: But, at advising, Strowie's lawyers pleaded, they had made a discovery of a remission recorded in Chancery, both to Lovat and Strowie, by which the presumption flew off of their being then engaged in unlawful designs; and it also appeared, he was afterwards fugitated for the same crime at the instance of the party injured, which process could not have gone on, unless his former condemnation had been taken away by the remission.

Answered; This was a remission never accepted of, which shewed his obstinacy at that time, and made the case worse; and, at the Chancery they registered the King's signatures, though not past the seals.

It was *argued* on the Bench, That there was a difference between the cause of an obligation and a resolutive condition; that turpitude in the cause would annul the bond, but in the other case it would vitiate the condition, and the bond become pure. With regard to the new production, Lovat was safe by the pardon to which the seals could be put, at any time during the granter's life; that it had certainly past one seal before it came to the Chancery, and the ordinary way of recording, was on the passing the seals; so it had probably past them all, and was in his possessson.

THE LORDS, 25th January 1745, in respect of the remission prior to the bond, instructed by the record of Chancery produced in Court, found the bond in question was not *ob turpem causam*, and that the reasons of reduction were not proven; and therefore assoilzied.

Pleaded in a reclaiming bill, That the bond was null, as being a bond of manrent, and contrary to the statutes discharging leagues and bands, a practice early prohibited by our law, and the fatal tendency whereof, sufficiently appeared by the commotions in the last century in this country.

THE LORDS refused the bill, and adhered.

Act. *Hamilton-Gordon & Graham jun.* Alt. *R. Dundas, Lockhart, & H. Home.* Clerk, *Hall.*

Fol. Dic. v. 4. *p.* 25. *D. Falconer, v.* 1. *p.* 69.

1753. *July* 7.

ANDREW GREY *against* CHARLES STEWART, JAMES GREY, and JAMES MILLER.

No 93. A sale made at a roup to a *white bonnet* is void, and the next highest offerer will be preferred.

JAMES GREY exposed his lands to be sold by public roup to the highest offerer. At the roup, James Millar was seemingly the highest offerer, and Andrew Grey was the second. Soon after the roup, James Grey, the seller of the lands disponed them to Charles Stewart, for whom it was pretended that Millar had offered by commission. Andrew Grey, the second offerer, insisted in a reduction of the sale made at the roup to Millar, and of the disposition made in consequence of that sale by James Grey to Charles Stewart; and he contended that

Millar was only what is called a *white bonnet*, viz. a person employed by the seller to raise the price without any intention of buying for himself, and secured that he should not be bound by his offer. The pursuer further alleged, that Charles Stewart was partaker of the fraud, in so far as he knew, that Millar was employed by the seller as a white bonnet. No 93.

At advising a proof in this case, it was mentioned from the Bench, that this too common practice of employing white bonnets at roups, was a manifest cheat. The person who advertises a sale by auction, pledges his faith to the public, that he is to sell to the highest bidder, and is not to buy for himself. In this case, the pursuer was really the highest offerer, seeing the offer of a white bonnet is no offer at all. That in the case of the sale of Keith, Watson *against* Maule, No. 22. p. 4892. *voce* FRAUD; the Court was clearly of this opinion upon the general point, though the decision went upon the particular circumstances of the case.

"THE LORDS found, that the offer made at the roup by James Millar, was made by him by commission from, and for the behoof of, James Grey the seller, and was illegal and fraudulent; and that therefore, Andrew Grey, the immediate preceding offerer, ought to be preferred as the highest offerer at the said roup; and found sufficient evidence, that Charles Stewart, who was present at the said roup, was partaker with James Grey of the said fraud; and therefore sustained the reason of reduction of the disposition by James Grey to the said Charles Stewart, and seisin following thereon, and reduced the same; and found the said James Grey obliged, on the pursuer's making payment to him of the price offered by him at the said roup, to dispone the lands to the pursuer in terms of the articles and conditions of roup, and found the defenders liable to the pursuer in the expenses of this process."

Act. *Borwell.* Alt. *Hay.* Clerk, *Justice.*

Fol. Dic. v. 4. *p.* 35. *Fac. Col.* No 87. *p.* 132.

1758. *July* 21.

JAMES GRANT of Delay *against* GEORGE SMITH.

No 94.
Sale of growing unripe corns, whether it transfers the property, so as to exclude the posterior diligence of other onerous creditors.

JAMES GRANT of Delay, was creditor by bill for L. 476 Scots, payable at Whitsunday 1753, to one John Cuming, tenant in Tombea of Glenlivat.

Cuming, some time before sowing the crop of that year, had contracted various debts, and become insolvent.

The only subject of any value, for payment or satisfaction to his creditors, was the corn of that year's crop. Immediately after part of the corns were sown, and afterwards, in the months of June and July, while the corns were yet green, Cuming, being pressed by sundry of his creditors, who were about to poind his effects in virtue of their diligences, agreed with several of them, and