

articles, and given his bill payable to the trustees for the price; though the creditor *contended*, That he had openly expressed his disapprobation of the trust, and that seeing the bankrupt himself at the roup, he conceived it was held solely under his authority. See APPENDIX.

No 214.

Fol. Dic. v. 4. p. 160.

1791. May. 21.

HARIOT *against* CUNINGHAM.

HARIOT sued Agnes Cuningham for delivery of a gown, petticoat, and table-cloth, his property, of which he alleged she had got possession without cause and without his consent. The defender admitted, that the articles were in her hands, but urged, that they had been pledged by the pursuer's wife for the balance of a shop-account due by her and her husband; of which allegation, however, she had no other proof than an irregular account-book where the articles were entered, as also the balance due. THE LORDS were of opinion, That the defender being in possession of the articles, was in law presumed to be the owner: That the pursuer had no proof to the contrary, but the defender's own admission, which it therefore behoved her to take with the quality annexed; otherwise he must prove his property, and the *modus quo desiit possidere*, as he best could: They therefore found, That the defender was not obliged to give up the articles unless on payment of the alleged debt. See APPENDIX.

No 215.

Fol. Dic. v. 4. p. 160.

SECT. XII.

Verbal Contracts.

1781. December 12.

FRASER *against* LESLIE.

THERE was one Fraser that pursued one Leslie for succeeding in the vice of the Laird of and Mr William Leslie his brother; a decree of removing being before obtained against the said Laird and his brother. It was *answered* and *excepted* by Leslie, That he ought not to be decerned to have entered as vicious possessor, because he entered before the warning, by virtue of a title given to him by one Gordon, liferenter of the lands, and by virtue of the same was in possession, and so he not being called to the said decree of warning, he could not be decerned as vicious possessor. To this was *replied*, and they offered them to prove, That the said Laird of and Mr William his brother remained continually in possession until the time of the said warning, and so the defender could not be heard to make that allegiance. The contrary was

No 216.

A promise not to remove may be proved by witnesses, to the effect of preserving in possession for one year, but to no further effect.