

No 7. ing effect, viz. That, by the laws of Scotland, the annuitants could have no real right, in virtue of the trust-infestment, for security of bonds granted after the date of that infestment; but in respect of the circumstances of this case, and that it appeared that several of the said creditors, unacquainted with the laws of Scotland, had erroneously given up to the company the old bonds which had been duly assigned to them, and in place thereof taken new bonds for the same annuities in their own names, in the belief that their real right and security was not thereby impaired; and as the Duke, whose debt was contracted before making the said exchanges, had suffered no prejudice thereby, so he ought to take no advantage of the error; therefore that such annuitants ought to be preferred and ranked upon the company's estates in Scotland, as if they were still possessed of the old bonds entire and uncanceled; but that where the nominees or names of the lives in the old bonds were changed in the new bonds, the annuity could only subsist during the joint life of the new and old nominee.

Against that interlocutor the Duke reclaimed, and greatly insisted upon the danger of departing, in any case however favourable, from the known and established rules of our law. THE LORDS, upon hearing that petition, and answers thereto, altered, and found,

' That the annuitants, whose names are not mentioned in the schedule annexed to the disposition of the Trustees, or who have delivered up the old bonds granted prior to the date of the disposition and infestment, and have taken new bonds, (although either in their own names, or in the names of their assignees,) posterior to the infestment upon the disposition, have no real right upon the lands disposed to the Trustee, and in which they stood infest; and therefore can have no preference to the Duke of Norfolk, upon the Company's estates in Scotland.'

Act. *James Ferguson, Henry Home.* Alt. *Robert Craigie, Alexander Lockhart.* Clerk, *Gilson.*  
*Fac. Col. No 16. p. 33.*

\*.\* This case, as mentioned in Lord Kames's report, was appealed :

THE HOUSE OF LORDS ' ORDERED and ADJUDGED that the appeal be dismissed; and that the interlocutor of the whole Lords of the 30th of June 1752, be affirmed.'

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1756. *July 27.* ANDERSON of Linkwood *against* INNES of Dunkinty.

No 8.

A bond of corroboration to a son, of a debt due

JAMES FRASER granted to John Innes, younger of Dunkinty, a bond of corroboration for L. 500 Scots, of date 11th September 1733, in the following terms:  
 ' Forasmuch as I was justly owing George Innes of Dunkinty by bond, the sum

of 1000 merks Scots money, which was assigned by him to John Innes younger of Dunkinty, his son; and whereupon he raised diligence, by horn- ing, inhibition, and caption, for the said principal sum, penalty, and annual- rents contained in the said bond, in manner at more length specified in the said diligence; and seeing, after just count and reckoning betwixt the said John Innes and me, of this date, anent the said bond, and other bills and writs, that I was due to the said John Innes, or George Innes his father, con- form to a doquetted account apart, I am justly resting and owing to the said John Innes the sum of L. 500 Scots, as the balance of the said bond, and other accounts at the term of Lammass last bypast; and that he has superseded the payment thereof to the term of payment underwritten, upon my granting the bond of corroboration underwritten: Therefore, &c. Upon this bond of cor- roboracion John Innes adjudged the estate of James Fraser, and made his ad- judication effectual by a charge against the superior.

In a ranking of James Fraser's Creditors, it was *objected* against this adjudica- tion, That John Innes the adjudger had no right to the original bond of 1000 merks, said to be assigned to him by his father, because no such assignation is produced; and therefore, that the corroboration and consequent adjudications are null, as having no proper cause or just foundation.—It was *answered, imo*, That the bond of corroboration recites the assignation; and that this acknow- ledgment by James Fraser the debtor, while his credit was entire, is good evi- dence against him, and consequently against his creditors, the posterior credi- tors especially. *2do*, Supposing there never had been an assignation, a corro- boracion to a son, of a debt due to the father, is notwithstanding an effectual deed. The debtor is bound by his bond of corroboration, and all he can de- mand is, that, upon payment, the son warrant him against the father.

THE LORDS repelled the objection.

*Sel. Dec. No 115. p. 163.*

1785. February 25. JAMES RUTHERFORD *against* ELISABETH ANDERSON.

JOHN MASON granted an heritable bond to James Anderson, on which he took infestment. Afterwards Rutherford likewise obtained from Mason an heritable security over the same subject. James Anderson died, and was succeeded by Elisabeth Anderson, who delivered up to Mason her predecessor's bond, though not accompanied by a discharge or renunciation, being herself in a state of ap- parency; and in return received a new bond by Mason in her own favour, upon which infestment followed. She afterwards recovered the possession of the old bond, and likewise of the infestment, which had not been in the cus- tody of Mason. In a competition of Mason's creditors, Rutherford claimed a preference before Elisabeth Anderson, on this ground, That the heritable right

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to his father, is a good foundation for an adju- dication, tho' the original bond be not produced.

No 9.

The accept- ance of a new real security, without re- nunciation, does not in- novate the former one.