

No 27. in terms of an obligation, to receive him a kindly tenant, and was not by words of the present time.

Act. ———.

Alt. *Hart.*Clerk, *Hay.**Durie, p. 474.*

1734. *January 17.* SINCLAIR *against* SINCLAIR.

No 28.

A PERSON who had right to lands by disposition, containing procuratory and precept, without infeftment, granted a personal obligation to convey the same to one, and thereafter the disposition was adjudged by another. The creditor in the personal obligation *pleaded* preference upon this *medium*, That an obligation to assign a personal right, is a virtual assignation, by which the common author was denuded before leading the adjudication, according to the brocard, that a personal conveyance denudes of a personal right. On the other hand, it was *pleaded*, That an obligation to grant a right may be equivalent to the right itself, where the question is with the obligant, but never can be in competition with third parties, especially where the right to be granted is a procuratory or precept, an obligation to grant which will be no warrant for infeftment. THE LORDS found, That the obligation to convey the disposition in question, did not transmit the same, but that it did remain in the debtor's person, subject to the posterior diligence of creditors.—*See APPENDIX.*

*Fol. Dic. v. 2. p. 17.*

1737. *January 26.*

No 29.

Sir JAMES DALRYMPLE of Hailes *against* HEBBURN of Binston.

IN the year 1629, the parson of Prestonhall granted a tack of teinds, expiring in February 1728. In the end of the tack there is an obligation upon the granter and his successors, parsons of the said parish, after the ish of the present tack, to renew the same in favour of the tacksman and his heirs, for the like number of years, and the like tack-duty. The question was, If this obligation to renew was real and good against singular successors in the right to the teinds, so as to defend the tacksman and his heirs against the patron, who obtained right to the said teinds, in virtue of the act 1693, before any possession could be had upon the said obligation? It was *pleaded* for the tacksman; The obligation to renew is of the nature of a prorogation, which is a real right, and this must have been the meaning of parties; for, considered as a personal obligation, it could have no effect beyond the granter's life, seeing he could not bind his successor in office. *Answered* for the patron, Had the lands fallen below the tack-duty, there was no obligation upon the tacksman to continue in possession, and pay the tack-duty, after expiration of the tack in 1728. This obligation, then, can never be