

No. 2. 1739, Dec. 11. MR G. BUCHAN *against* SIR. W. COCKBURN.

THE Lords found Mr Cockburn bound to convey his right to Mr Buchan, in security of his purchase, by the President's casting vote; *renit.* Arniston, &c. who, as to the effect of a consent, distinguished betwixt the consent of the proprietor and of one who is only creditor, that in the first case the consent would convey the consenter's right, but that in the other it is only a *non repugnantia*. Drummore and I thought that a consent, without more, was effectual to convey all the consenter's rights to the purchaser, and that whatever is sufficient to convey the property will be equally effectual to convey every lesser right; but then here Sir William does not only consent, but is a principal disponent for all right, &c. The President and Kilkerran went into Arniston's notion of the effect of a consent, but then they thought here Sir William was a principal disponent.

On reconsidering this case, decided 24th July last, it seemed that Sir William was not a joint disponent, and therefore that the question depended upon what is the effect in law of a disposition with consent of a *verus dominus*. I could not think that this imported no more than a *non repugnantia*, which could never convey property, nor even secure against the singular successors of the consenter; and if it imports a disposition in the case of a *verus dominus*, why does it not so in the case of a creditor's *hypothecarius*? But as to this, I own Arniston satisfied me: He said, in the case of a *verus dominus*, or a party having or claiming the property of the subject, or even the liferent by way of locality, such a party consenting can intend nothing less than to convey that right, because he has no interest to retain it,—his right of property or liferent gives him no right to affect any other estate,—and therefore that consent must import more than a *non repugnantia*; but a creditor *hypothecarius*, or even a wadsetter, his meaning can be understood no more than a *non repugnantia*, for he cannot be thought to convey his debt without payment, and without conveying the debt, he cannot convey the security even on these lands, far less on other lands;—and therefore we altered the interlocutor, and found that in this case the consent imported only a *non repugnantia*, and that Sir William is not obliged to convey. We were pretty unanimous, but the President differed, and Drummore, as Ordinary, was in the Outer-House.

No. 3. 1744, July 26. CREDITORS of EASTERFEARN *against* REPRESENTATIVES of ANN M'LEOD.

WE gave the like judgment as we did 11th December 1739, Buchan against Sir William Cockburn, that a consent to a disponent by a liferentrix of an annuity, even though it had the words "renounce" and "overgive," imported not a conveyance of the liferent annuity, but a *non repugnantia*.

No. 4. 1748, Feb. 11. EARL of HOME *against* BOTHWELL.

A BOND of provision to several brothers and sisters, payable at their mother's death, or their majority or marriage, which should first happen, *proviso*, that if either of them died before marriage or majority, their portion should accresce, the one half to the other sisters,—one of them having survived majority, but died before marriage, Drummore found