

No 264.

THE LORDS found, That the disposition to the superior behoved to be held as of the date of the resignation *ad remanentiam*. See No 6. p. 4.

Reporter, Murkle.

A&S. H. Home.

Alt. Lockhart.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 67. D. Falconer, No 91. p. 101.

No 265.

A security for a *novum debitum* found not to fall under the clause of the act 1696, relative to the date of the sasine.

1751. January 29.

JOHNSTON against BURNET and HOME.

THOMSON had a credit from the British Linen Co. for which he and Home granted bond to the Company; and, of the same date, Thomson and Burnet gave a bond of relief to Home, in which he disposed to him certain subjects in security of his relief: on which Home took infeftment. A prior creditor of Burnet's pursued reduction of this heritable bond, on the ground, that, before Home's infeftment, Burnet had been rendered notour bankrupt in terms of the act 1696; and, by that statute, the bond must be considered as of the date of the sasine. *Answered*, The clause in the statute, declaring dispositions by bankrupts to be held as of the dates of the sasines, concerns only securities granted to prior creditors, but does not affect *nova debita*, such as the present.—THE LORDS absolved from the reduction.

See The particulars of this case, No 200. p. 1130.

Fol. Dic. v. 3. p. 67.

No 266.

A person, at clearing accounts with his partner, disposed to him an heritable debt in payment of the balance, by assigning the precept for infeftment. He became bankrupt before infeftment was taken; and a creditor had arrested in the interim. In a competition, urged for the disponee, that the statute applies only to deeds

1758. December 20.

SIR WILLIAM MAXWELL of Springkell, against BENJAMIN BELL.

WILLIAM SCOTT and BENJAMIN BELL, carried on for many years, a trade of purchasing cattle in Scotland, and selling them in England; which began in the year 1720.

In 1727, they acquired from John Somervel, *equally betwixt them*, an heritable debt on the estate of Crowdiknow, for L. 350, upon which Somervel had been infeft. The heritable bond and conveyance, in their favour, was produced in the ranking of Crowdiknow's creditors.

Upon the 8th of April 1745, a final clearance was made between them, by a fitted account, in which the whole of this debt was stated to the debit of Bell; and after stating every other article, the balance came out due to Scot by Bell L. 454. A disposition was the same day executed by Scot in favour of Bell, of Scot's share of this debt, assigning him to Somervel's precept. Bell afterwards paid to Scot the balance due by the account.

In the year 1746, Bell put Scot's disposition into the general register.

In 1748, Scot became a bankrupt in terms of the act 1696.

In July 1749, Sir William Maxwell, as creditor to Scot, arrested in the hands of Graham, purchaser of Crowdiknow, in order to affect Scot's share of the an-