1752. *June* 26.

YORK-BUILDINGS COMPANY'S ANNUITANTS *against* DUKE of NORFOLK.

No. 12.
Effect of innovation of the debt.

THE York-Buildings Company having granted many annuities for lives, payable out of their estates in Scotland, for which they granted personal bonds; in 1727 certain trustees got infeftment in these estates for security and payment of these annuities, which were all contained in a schedule annexed to the disposition, mentioning the annuitants, and the annuities severally due to them, (though not the persons for whose lives they were payable, which sometimes were different from the annuitants themselves.) In 1730, the Duke of Norfolk and others became the creditors to the Company by a lease of the mines in Strontian, and in consequence of that lease adjudged the Company's estates for great sums. As these annuities were assignable, many of them were assigned, and some of the assignees renewed their bonds, gave up the old bonds assigned to them, and got new bonds in their own names, and some of them for lives different from those in the original bonds. The Duke of Norfolk pursued reduction of that trust-infeftment, and of all these annuities, in order to discover what annuities still truly subsisted, and how many were determined, and in that process objected to all those new bonds granted after the date of the trust-right; and on a reclaiming bill for the Duke against several interlocutors of Lord Drummore's, and answers, we heard the cause in presence, and on the hearing gave the following interlocutor:—" Find, that by the laws of Scotland the " creditors annuitants can have no real right in virtue of the trust infeft- " ment in the Company's lands and estate in Scotland, for payment or " security of bonds granted by the Company after the date of the said in- " feftment; but in respect of the circumstances of the case, and that it " appears that several of the said creditors, unacquainted with the laws of " Scotland, have erroneously given up to the Company the old bonds, for " security and payment of which the said trust-infeftment was granted, and " which bonds had been duly assigned to them, and have in place thereof " taken new bonds for the same annuities in the names of the said assig- " nees, in the belief that their real right and security in the said lands and " estates in Scotland was not thereby hurt or impaired, and as the pursuer, " whose debt was contracted before making the said exchanges, has suffered " no prejudice thereby, so he ought not to take any advantage by that " error: Therefore find that the said annuitants who have delivered up " old bonds prior to the date of the infeftment, upon getting new bonds in " their own names, ought to be preferred and ranked on the Company's

No. 12. " estates in Scotland, as if they were still possessed of the said old bonds " entire and uncancelled; but find, that where the persons during whose " lives the annuities in the old bonds were to subsist, were different from " the persons during whose lives the annuities in the said new bonds are " granted, that in such cases the annuities must cease and determine by " the death of the persons named in the new bonds, and that neither the " Company nor the estates in Scotland are any longer liable for the same, " albeit the persons named in the said old bonds shall be still living; but " find, that the said preference upon the Company's lands and estates in " Scotland does cease and determine by the death of the persons during " whose lives the said annuities were granted by the old bonds, although " the persons named in the new bonds shall happen to survive them, and " remit to the Lord Ordinary to proceed accordingly." The interlocutor was agreed to unanimously, and I mentioned two precedents (not mentioned by the bar) that seemed pretty parallel. One observed by Dirleton, February 5, 1674, Binnie against Scott;* the other by Forbes, July 29, 1713, Creditors of Achlossin competing; † and the reason of the last part of the judgment seemed pretty apparent, for no equity could make the annuities subsist against the Company longer than by their last covenant with the annuitants, that is, than the lives of the nominees in their new bonds; and though the Company must remain bound during their lives, although the nominees in the old bonds be dead, yet no equity can give the creditors a preference on these estates longer than if they had kept their old bonds. The Lords, after long reasoning altered this interlocutor, and found that the new bonds cannot be ranked on these estates as the old bonds would have been. (See DICT. No. 7. p. 7062.)

1753. *July* 27.

CREDITORS of Sir JAMES CAMPBELL of Auchinbreck *against* EARL of LAUDERDALE.

No. 13.
Preference for balance of price of lands remaining unpaid.

THE last Earl of Lauderdale wanting to sell the lands of Glassery, and yet unwilling to represent his predecessors, agreed with Sir James Campbell of Auchinbreck, that Sir James should acquire certain diligences affecting them, after these debts should be adjusted by the Earl and the creditors; and on the purchase of these diligences, that Sir James should thereby have right to the lands forever without challenge from the Earl or his heirs, who was also to cause John Corse, his trustee, renounce certain adjudications of

* DICT. No. 2. p. 7057.

† DICT. APPEND. II. *voce* INNOVATION.