No 36. the estate, of which a process of sale had been brought at the instance of Captain Wedderburn's apparent heir, raised an action against Elizabeth Wells, and other Representatives of Megget, then dead, for payment of the arrears which had been due by him, according to the new lease. They, being desirous to abide by the former one, in which the term of endurance was larger, and the rent smaller than those of the latter;

Pleaded in defence; Sir John Halket never had more than a personal right to the lands, and therefore could not grant a lease of them to be effectual against singular successors; those successors at least who do not derive right from him. Nor, for the same reason, could he effectually relinquish or evacuate a subsisting lease of those lands. If so, the defenders still continue to be bound by their former one; which, as it is thus binding against them, is certainly not less obligatory in their favour. Being then a subsisting lease, the defenders are willing to hold by that first bargain, in opposition to which the present action cannot proceed.

Answered; Sir John Halket having been truly proprietor of the estate, his titles to which he might at any time have completed by adjudication in implement, leases granted by him would have been effectual against the heir of Captain Wedderburn. In this case then his discharge of a prior lease is not less valid and binding. Nay, though he had only been a putative proprietor, the lessee would have become effectually bound on the true proprietor's recognising his acts; and this the pursuer, in the present proprietor's name, now does. The second lease, therefore, ought to regulate the claims of the parties; and on it the present action is founded.

Observed on the Bench; The lessee, in virtue of the new tack, continued the possession during the full period of its endurance. He was not, nor are his Representatives, entitled to challenge or object to the right of his author.

THE LORD ORDINARY had pronounced an interlocutor, finding, "That the lease granted by Sir John Halket on the supposition of his being proprietor of the estate of Gosford, which it was afterwards found he was not, was *not* obligatory on the defenders;" but the COURT altered that judgment, and

"Found, That the above mentioned lease *was* obligatory on the defenders."

Lord Ordinary, *Alva.* Act. *Tait.* Alt. *D. Græme.* Clerk, *Orme.*
S. *Fol. Dic. v.* 4. *p.* 78. *Fac. Col. No* 22. *p.* 42.

1791. *November* 15.

No 37. YORK-BUILDINGS COMPANY *against* MARTIN, STONE, and FOOTE.

Bonds having been issued in a form calculated for ready currency, and apparently free

THE York-buildings Company, about sixty years ago, as a resource for procuring money, issued bonds to a large amount, for sums far exceeding the value obtained for them. They were in the following form, being transferable by indorsement, and similar to those of the East-India Company:

No 37.
from exception; the *exceptio non numeratæ pecuniæ*, though good against those who first obtained them, not competent against their assignees.

"The Governor and Company of Undertakers for raising Thames water in York Buildings, do hereby oblige themselves and their successors, to pay unto , his executors, administrators, or assigns, by indorsement hereon, One hundred pounds, with interest at the rate *per centum per annum*, on the day of ; for the true payment whereof, they bind themselves and their successors in the penal sum of Two hundred Pounds. *London, the day of* . By order of the Court of Assistants."

Each bond was signed by the Company's cashier, sealed with the Company's seal, and made payable to one of their officers, who put his name on the back of it; in which state it was delivered to the original creditor, having, in a few instances, the indorsement filled up, but in general it was left blank, as it still remains.

In the ranking of the Creditors of the Company, claims were made on those bonds, which had passed through a variety of hands. To these claims it was, on the part of the Company,

Objected, That the *exceptio non numeratæ pecuniæ*, which would have stood against the cedents, was equally competent against the assignees.

Answered; The form and manner in which the Company issued their bonds, as circulating securities transferable without embarrassment, evinced their intention to obtain the advantage of rendering them marketable in Exchange Alley, like India bonds or Government stock; and having thus gained their end, they are barred *personali exceptione* from disputing that privilege, on the faith of which the acquisition of the bonds was made.

If, then, the Company would otherwise have had the right of opposing to an assignee any exceptions applicable to the cedent, they must be presumed to have renounced that right. For every man may renounce a legal interest or privilege, if no injury result to third parties. Thus, formerly, in the case of blank bonds, the granter was understood to have renounced all pleas of compensation prior to the date, though, at the same time, the right of his other creditors remained entire.

In some instances, the negotiability of obligations, it is true, has been authorised by particular statutes. But this was not necessary; for it might have been equally established by usage; as has happened in respect of India bonds, which have thence acquired the same currency. Nor should the bonds in question be thought to have received a less sanction from the public acquiescence during so long a period of time.

Replied; The general rule of law is, that every plea which would have effect against a cedent, shall be equally effectual against the assignee.

If the bonds or obligations granted by the South-Sea Company be assignable by indorsement, and negotiable like bills of exchange, or if those of the Bank of England be in a similar situation, it is because that privilege was conferred on those companies by special acts of Parliament; 5th William and Mary, cap.

No 37. 20. § 29.; 9th Annæ, cap. 21. § 27. But the York-buildings Company never obtained any such privilege.

Nor, from the manner in which the bonds are framed, does any personal exception arise to bar the present plea. The indorsement is a short form of assignation; but its brevity will not exempt the assignees from the usual obligations. Indeed the managers of the company had no power to issue bonds in any such irregular or illegal mode, as to create a damage to the company, or to make that a just debt, which in reality was not just.

The objection, of no true value being given for the bonds, is of a different nature from the plea of compensation, held to be renounced in the case of blank bonds. Nay, it is such as could not have been relinquished even by the company in a body; nor, in the case of a single person, could it be renounced by the individual himself. For if a bond be granted for more than the money truly advanced, the transaction becomes usurious. In this view, indeed, the point of negotiability is, in a great measure, superseded, as that objection would be competent even against a bill of exchange, if used out of the ordinary course of commerce; Bankton, b. 1. tit. 13, § 17.

The Lords "found, that the York-buildings Company, having, in the year 1731, and at other periods, issued bonds payable to a clerk of the Company, or his assigns, by indorsement, any holder of the said bonds, whose name was afterwards filled up in the blank indorsation, as the assignee of the said nominal obligee, for value received, must be presumed to have acquired such bond fairly, and must be held as a just and lawful creditor for the full contents thereof; and that the Company are not entitled to plead any defence against his demand, arising either from the form of the security, or from latent objections against other persons who may formerly have been possessed of the said bond, but whose names do not appear on the face of the bond or indorsation."

For the York-buildings Company, *M. Ross, et alii.* Alt. *Maconochie, et alii.*
Clerk, *Colquhoun.*

S. *Fol. Dic v. 4. p. 79. Fac. Col. No 188. p. 391.*

See Appendix.