

Accepting of a new Bond granted to him by other persons, than those who granted the former Bond for payment of the same debt, and accepting partial payment thereof from the Debtors in the last bond; did not take away the prior bond, nor free the persons bound therein; But that the Creditor might have recourse as he pleased to the first bond; seeing he had not expressly discharged the first bond, when he received the last 29 March 1626 King contra Gailor. But it otherwise by the words of the law where novation is inferred from the presumed meaning of parties not to corroborate the former obligation, where no reservation is made in the new obligation. *Stair lib. 1. tit. 18. § 3.* And it was found relevant to Exclude Action upon a bond, that the Creditor had accepted a posterior security in Satisfaction thereof; tho he did not Renounce Or Discharge the former security. *6 Decemb. 1632 Philom contra Gordon*, Or that the creditor had as yet ware accepted in partment in the Debtors land in satisfaction of the sum for which the Bond was granted, tho it made no mention of the Bond 23 July 1633 Lawson contra Scott of Whitelee. A Bond being granted by a father to his infant Daughter payable thir teen years thereafter, with annual rent from the term of payment, and a posterior bond for a greater sum payable and bearing annual rent two years and a half sooner than the first; both which bonds bore, that in case the Daughter happened to Die Child less before she were year and day, the sum should return to the fathers heirs, and it was found that the same was granted in Satisfaction of all that she could claim by her fathers Decease; and the second Bond excepted what he should please to leave ^{not} the Daughter was found to have right to both Bonds, and the first was found Innovated by and Included in the last 24 Feb. 1709 Burnol and her husband contra Baron Maitland and Young of the bar. An inevitable bond of provision to a younger Child Clother with Infeftment, was found Innovated by a posterior bond where in the Creditor accepted the heirs Resignation for the money in full satisfaction of all former provisions made by the father and Discharged the heir of the same 17 July 1711 Clark and Reid contra Creditors of Broadbent.

Taking a precept by a Creditor upon the Debtor of his Debt by

The General Rule is, that a Creditor who takes a precept upon the Debtor, and receives partial payment, does not discharge the Debt, nor free the Debtor from the obligation of the Bond, unless he expressly discharges the same.

By Bond, obtaining the precept accepted, receiving partial payment and a bond of Corroboration for the Remainder, payable at a certain time; did not Innovate the first Bond: seeing, the same by a clause in the Precept was to be Retired only upon payment 10 January 1706 Barne contra Forstoun. One having by ticket obliged himself to pay to another a certain sum as the price of Rigging, furnished to him for a Ship belonging to the Government, it was by the same payable when he was employed for and rigging that Ship is paid; and the Creditor ~~thereafter~~ in the ticket having thereafter taken a bill from the Debtor upon his factor, ordering to pay the said sum to the creditor out of the first and Readiest money due to the Debtor out of the Government, which bill was accepted; the ticket was found payable all the time when the bill was paid by the factor to the Debtor; and the creditor's taking the bill in payment, was found no Innovation of the ticket, there being no definite term of payment, or new term of payment expressed in the bill, but only a new additional fund of payment pointed to the creditor 26 June 1711 Captain Oswald contra Captain Gordon & Creditors who bore five accepted inevitable bonds from their Debtor such as the action of perjury debt, after the Debtor was convicted of his Deceit, by Detraction and Infeftment in favour of his son with the burden of the dispanment debts, before the said Infeftment was published or registered; were allowed to be ranked as Creditors of the father; with those whose debts the said Infeftment was burdened with, the Grounds of the original debts being produced 21 July 1733 Creditors of Joseph Mackintosh for perjury. In which Decision the Bonds were granted by different Heirs. One thought, that if an heir of Tailzie tied up with a Clause Infeftment in case of his Contracting Debt, should pay an Old Debt contracted by the Maker of the Tailzie with money borrowed from another hand, and give to the Lender an inevitable Security upon the Estate for the same: that such Clause Infeftment; if the new Creditor could prove that his money was so applied. Other bonds supposed, that a Creditor's taking a Bond from his Debtor Infeftment, in implement of a Debt due before Infeftment, the new Security could not be Reduced *Ex Capite Infeftionis*, if the Creditor could prove that he had