cutor bearing the *ratio decidendi* that the disposition was to the whole creditors, the consequence was, that either no creditor could be ranked, but those contained in the disposition, and for the sums mentioned in it, and that was neither just in itself, nor in the Lords' power, or if other creditors were ranked, the interlocutor 1726 behoved to fall to the ground as proceeding on an error in fact.

No. 13. 1738, Jan. 10. CREDITORS of PATERSON, *Competing*.

(See Note of No. 5, *voce* COMPETITION.)

No. 14. 1739, Jan. 18. CHALMERS *against* M'ALLA, &c.

AN assignation of moveables and household furniture being granted 16th May 1736, by Charles Stuart, who became bankrupt in the beginning of August, when he assigned to the same creditors his tack of the house in security, which right to the tack was reduced by the Ordinary in the Outer-House on the act 1696; but Chalmers having arrested on the 7th of August, and quarrelled the assignation to the plenishing as simulate *retenta possessione*, a proof was allowed; and at advising, it appeared that the possession was retained by the bankrupt till the 8th of August, when M'Alla, the disponee, let both house and furniture to Sir John Eveline, as tenant, which was after Stuart's bankruptcy, but before the arrestment. The question was, Whether the disposition of moveables being completed before the arrestment, by actual possession, the disponee ought not to be preferred, since his disposition did not fall within the act 1696? The Lords, however, reduced the disposition, which they looked on as fraudulent;—and it is said the same thing was decided betwixt the Creditors of Commissioner Whitehall and Mr Colvill, (or Colquett.)—18th January The Lords adhered without answers.—(January 6.)

No. 15. 1739, Feb. 1. CREDITORS of MATHIESON *against* CARLILE.

THE Lords sustained the sales by the trustees, notwithstanding of prior inhibitions at Carlile's instance, in respect Carlile qualified no damages by the sales being under the value, as they had before found in the case of Creditors of Halgreen.

No. 16. 1740, Nov. 7. KIRKLAND *against* MILLER.

WE agreed that this being a disposition *omnium bonorum* between a son and father would not be good against creditors, at least that they must come in *pari passu;* but we differed whether the bond of corroboration *in grœmio* of that disposition be reducible, though the father had as summary diligence upon the bonds corroborated if he had used it, and though such a bond without a disposition would be reducible;—but it carried not, by a great majority.

No. 17. 1743, Feb. 9. CREDITORS of HAMILTON *against* HENRY.

WE had appointed a hearing in presence upon two points in this case, Whether a person being once notour bankrupt in terms of the act 1696, if the debt in the caption on which he was imprisoned be paid, and the caption discharged, and he at liberty, he still

continues notour bankrupt in the construction of that act, provided he still continues insolvent, or if it is necessary that he also continue under diligence with the other alternatives of the statute? *2dly*, Whether securities granted by such bankrupt for payment of other peoples' debts, as well as for payment of his own debts, are reducible by this act? Upon the first point, the Lords by a great majority, found that the debt and caption being discharged before the transaction quarrelled, it fell not under the act 1696; wherein the President, Arniston, Royston, and Kilkerran were clear of that opinion, which I own I was not. They also found, that the giving security for payment of another person's debts did not fall under the act.

No. 18. 1743, June 17. Robert Forrest *against* Margaret Laing.

A bankrupt making over his estate to trustees for his creditors, who sold the estate, and made the creditors, on receiving their proportions, to make over their debts to the purchaser, with absolute warrandice *quoad* the sum received, and from fact and deed *quoad ultra*, but not to affect the debtor's person, or other effects;—the Lords found, that after that assignation, the original creditor had no action against the debtor for the debt.

No. 19. 1746, June 20. Marshall *against* Yeaman and Spence.

Yeaman and Spence, Scotsmen, merchants in London, gave promissory-notes for L.78 to Thorburn, also a Scotsman, but then in London, and which notes were afterwards indorsed to Marshall.— A statute of bankruptcy went out against Yeaman and Spence, wherewith they complied; but neither Thorburn nor Marshall compeared before the Commissioners, nor got any share. Now Marshall sues them, and they plead the statute of bankruptcy, and their having complied with the conditions.—Dun sustained the defence;—and this day we adhered without a vote,—but Tinwald doubted.

No. 20. 1746, June 20. Alexander Christie *against* John Spence.

This case came before me, and being upon the same point of law, (as above,) I took it to report, and was allowed to do it when the former question was under deliberation. Straiton, a Scotsman in London, became debtor to Christie in Montrose, merchant, in L.281, as the balance of an account, arising partly from bills drawn by Straiton on Christie, but chiefly from cargoes of linen bought by Christie on commission from London, and sent to Straiton to be disposed of for their joint account, and of which Christie got the prime cost to pay of Straiton's half and his own, a commission of bankruptcy having gone out against Straiton in May 1744. He duly acquainted Christie, and sent him his account-current ascertaining his balance to the end, that he might claim and draw his share, which Christie neglected, but took a decreet in absence against Straiton in this Court in July 1744. Straiton complied with the statute, and got the Chancellor's certificate, and began again to trade. Christie arrests here some of his new acquired effects, and pursues forthcoming; to prevent which Straiton drew bills on his debtors, payable to John Spence, but for his own behoof, which Spence owned, and competed on these bills in the forthcoming.