No. 15. 1745, July 16. CREDITORS of MR MURRAY *against* MISS MURRAY.

THE Lords sustained the reasons of reduction on the 1621, if it shall appear that Mr Murray was insolvent at the date of the contract of marriage. 18th June 1746 Adhered by President's casting vote.

No. 16. 1747, June 5. CREDITORS of CORDINERS of CANONGATE *against* THOMAS GRANT.

AFTER these cordiners were notour bankrupts, though not in the terms of the act 1696, they disponed to trustees for behoof of all their creditors *nominatim* their whole effects real and personal, and by the disposition the creditors renounced any claim to future quarterly payments or new upsets, and any further action against the Corporation, and the trustees were not liable in omissions, but after two years might be charged by the creditors. This disposition was next day intimated to their tenants, and some days after Thomas Grant, who would not accede to this settlement, arrested, and a competition ensued. Their intimation was prior in time and therefore preferable, and the disposition was not reducible on the act 1696 or 1721, for there neither was nor could be horning at Thomas Grant's instance, whose term of payment was more than two months after his arrestment;—but he insisted that the disposition being by notour bankrupts it was reducible at common law; 2dly, That no creditor could be obliged to accept of the conditions of renouncing the quarterly payments, upsets, and future acquisitions, nor to free the trustees of omissions. Answered: A reduction at common law is only to the effect of bringing in the creditors *pari passu*, and therefore a disposition to them all cannot be reduced: There is no fraud, and many decisions were quoted, particularly one in 1743, Snodgrass against The Creditors of Beatt, which I had forgot, but wherein Kilkerran was very particular:—To the second, the quarterly payments, (which were 7s. per quarter) were only charity for maintenance of their poor, and without such a transaction there could be no new upsets nor future acquisitions, but the Corporation must die out,—and the trustee may now be changed at the creditors pleasure. Replied: A debtor notoriously bankrupt cannot prejudge diligence either done or be done by any of his creditors, and quoted also some decisions. The Lords pretty unanimously sustained the disposition, and repelled the objection to it, *me referente.*

No. 17. 1747. Nov. 26, Dec. 9. WILLIAM TAYLOR *against* LORD BRACO.

THE question was, Whether a disposition by an heir or an apparent-heir *intra annum* is upon 24th act 1661 void and null in competition with a creditor of the defunct's though he has not done diligence within the three years? The Lords unanimously found the disposition void and null, though no diligence was done within the three years, agreeably to a decision in Harcarse subjoined to decision 144. December 9th, Adhered and refused a reclaiming bill as to that point. (*Vide* No. 21. *voce* WRIT.)

No. 18. 1748, June 11, 22. BOWACK *against* CROLL.

ONE Beattie having in December 1743 assigned his tack from Mr Gordon of Troup to one Bowack of a farm then possessed by Croll, who was married on Beattie's wife's sister;

to disappoint this assignation he made a sub-tack of the whole to Croll in February 1744, to commence from the preceding crop. Bowack intimated his assignation to Croll, but only some weeks after the sub-tack, and warned him to remove, and the process came by advocation to this Court; and it being proved that before getting the sub-tack, Croll was in the knowledge of Bowack's assignation, we therefore preferred the assignation, decerned in the removing, and gave expenses; for though Croll was in possession upon his sub-tack before the assignation was intimated to him, and was therefore in that respect preferable, yet it was fraud in Beattie to grant the sub-tack, and Croll being in the knowledge of the assignation was *particeps fraudis*; and though Beattie had no power to assign his tack, yet neither he nor Croll in his right could quarrel it on that head, and Troup now consents to the assignation. 22d June Adhered, and refused a bill without answers.

No. 19. 1748, Nov. 9. SIR ARCHIBALD GRANT *against* CREDITORS of GRANT.

TULLIFOUR finding his debts exceeded his estate, and being due a great claim, he called a notary and without even acquainting his other creditors caused him make out three heritable bonds to them, and caused him sit up all night to write them, and enjoined him to keep them secret, and towards the end of the 60 days registrated them, and meantime continued communing with Sir Archibald Grant, and in about 18 months gave him an herible bond. Sir Archibald now pursues reduction of these infeftments on the acts 1621 and 1696, and upon the common law, and also objected to the infeftments to more persons in one bond. The President seemed to think there might be something in that objection as to the sasine, and likewise something in the first part of the act 1621, but the rest of us thought there was little in either or in the act 1696, but we all agreed in reducing upon the head of actual fraud to the effect of bringing all in *pari passu*.

No. 20. 1748, Dec. 7, 21. CHRISTIE and COMPANY *against* FAIRHOLMS, &c.

ONE Anderson in 1746 bought from Christie and Company in Glasgow 30 hogsheads of tobacco, for which he was to grant a bill with Drysdale his father-in-law, and which tobacco he was to export from Elphinston. He sent a bill bearing to be accepted by him and Drysdale, and thereupon they sent the tobacco, which was shipped, but immediately arrested by Fairholms and others, creditors of Anderson, which produced an agreement. Anderson gave up the skipper's bill of lading in his own name, and a new bill was taken in Fairholms name and the tobacco consigned to Dunlop in Holland to be sold for the creditors account. Anderson went along, and the tobacco was sold, and the account of sales sent Fairholms, with a letter from Anderson to Fairholms to divide the net-proceeds, L.285, among the creditors, in May 1747. Thereafter Christie charged Drysdale on the bill, who suspended on this reason, that the bill was not signed by him but by a boy, who adhibited his subscription, and this question lies at an act for proof. Christie, doubtful of his success, sues Fairholms for the price of the tobacco, because of Anderson's fraud, and that the bill not being signed by Drysdale in terms of the bargain of sale, the property of the tobacco never was transferred. Most of the Lords thought the property not tranferred, and that the fraud was a *vitium reale*. The President thought there was a difference be-