

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 heritable bond. Sir Archibald now pursues reduction of these infestments on the acts 1621 and 1696, and upon the common law, and also objected to the infestments 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 transferred, and that the fraud was a *vitium reale*. The President thought there was a difference be-