

1748. *June 22.*BOWACK *against* CROLL.

No. 18.

A TENANT having assigned his tack to one, and at the distance of some weeks, and before the assignation was intimated, granted a sub-tack of the same lands to another, who was before in possession, but without any tack; though the sub-tack was undoubtedly preferable, being first clothed with possession; yet upon a proof brought of the sub-tacksman's private knowledge of the assignation before taking his sub-tack, we preferred the assignation, and decerned in the removing that was pursued against the sub-tacksman, and decerned him in expenses, though the principal tack did not bear to assignees; for it was fraudulent in the tacksman to make these double deeds, and the sub-tacksman being in the knowledge of the assignation, was *particeps fraudis*; and the tacksman, nor none deriving right from him, could object that the tack did not bear assignees; and here the heritor concurred with the assignee. (See DICT. No. 164. p. 15280.)

1748. *November 9.*SIR ARCHIBALD GRANT *against* CREDITORS of GRANT of Tillefour.

No. 19.

A PERSON insolvent having privately employed a notary to write three heritable bonds to his favourite creditors, and caused him sit up all night writing them, and enjoined him secrecy, and infest the creditors privately, and registrated the sasines about the end of the 60 days in the general register, omitting one who was his greatest creditor, with whom he kept up communing for 18 months, and then gave him an heritable bond whereon he was infest; that creditor pursued reduction of the three heritable bonds and sasines, *1st*, for that they were to more persons than one; *2do*, on the act 1621; *3tio*, on the act 1696. The President thought there was some weight both in the first reason and in the first branch of the act 1621, but the Court disregarded them; but we unanimously agreed to reduce on the common law, on actual fraud, to the effect of bringing them all in *pari passu*. (See DICT. No. 71. p. 949.)

1748. *December 21.*CHRISTIE and COMPANY *against* FAIRHOLMS and COMPANY.No. 20.
Pitium reale.

CHRISTIE and Company sold 30 hogsheads of tobacco to Anderson, for which he was to give a bill by himself and one Drysdale. He sent the bill, but

Drysdale's name was counterfeited, being added by a boy his son, and the tobaccos were sent from Glasgow to Elphinstone, and loaded on board for exportation, and arrested on ship-board by Anderson's creditors; and afterwards by agreement the arrestments were passed from, and new bills of lading taken in the creditors' names, the tobacco exported to Holland and sold, and account of sales sent, and the proceeds remitted to be divided amongst the creditors. Christie pursued reduction of the sale and payment of the net proceeds, and Fairholms and Company, the creditors to whom the price was remitted raised multiplepointing. The Lords preferred Christie and Company to the price. They thought Anderson's fraud a *vitium reale*, and that the property was not transferred; and the President distinguished betwixt the case of arresters and purchasers in way of commerce. (See DICT. No. 24. p. 4896.)

No. 20.

1749. *February 22.*

AGNES STEWART of Phisgill, *against* Mrs CHRISTIAN HERON, Widow of CAPTAIN STEWART of Phisgill.

No. 21.

THOUGH in 1743 we reduced a tailzie made by John Stewart of Phisgill in 1719, as done *in fraudem tabularum* of his marriage-contract 1688, and our decree affirmed in Parliament, (as marked *voce* MUTUAL CONTRACT;) Captain Stewart, the heir for the time by the entail 1719, and who was infest and in possession of the estate, having by his marriage-contract provided his wife to a liferent of 900 merks out of that estate, and afterwards in implement of it, and for love and favour, infest her in a jointure of 1200 merks; the Captain being now dead, in a dispute betwixt Agnes Stewart, now of Phisgill, and the widow, we sustained the widow's infestment for 900 merks, but not for the additional 300 merks.—We adhered. (See DICT. No. 24. p. 1705.)

1749. *November 10.*

HENRY ELLIOT in Flatt *against* WILLIAM ELLIOT of Kirklands.

No. 22.

A THIRD or FOURTH purchaser of lands, found not obliged in a reduction on the act 1621 to astruct the onerous cause of a disposition to their remote author 57 years ago, though it was granted by a father to his second son. *Vide* PRESCRIPTION.