

creditors have actions against the heirs of Earl of Selkirk to account for the subject of the trust, *renit.* President.

No. 10. 1740, Nov. 21. ANDERSON *against* LAUDER.

THE Lords adhered as to the debt assigned by his father-in-law, which is finding that a trustee for compounding debts must not only communicate the eases of debts he compounds, but must state debts conveyed to him gratuitously by his parents, to which he must succeed, though they were not assigned to him at the same rate.

No. 11. 1741, Feb. 23. KING'S COLLEGE OF ABERDEEN.

See Note of No. 21, *voce* JURISDICTION.

No. 12. 1744, Nov. 9. SINCLAIR of Barrack *against* SINCLAIR of Dun.

FOUND Barrack, by accepting this assignation, liable to use diligence for his own and the defender's relief; but then they thought that diligence only such as he used for his own debts, but did not determine this point.

No. 13. 1747, Nov. 25. CREDITORS OF JAMES DUKE OF HAMILTON
against THE HEIRS OF THE EARL OF SELKIRK, &c.

THE Lords *nem. con.* found action competent upon the trust-deed. Kilkerran and Finwald spoke against the interlocutor, but did not vote. Arniston did not speak, but voted for the interlocutor.

No. 14. 1748, July 6. GORDON of Buckie *against* ANDERSON, &c.

GORDON, as purchaser of the estate of Arradoul, made large payments of part of the price to the creditors ranked, but far within their proportions, till a scheme of division should be made; and among others made a payment to Sir William Gordon of Park, who had adjudged both for himself and as trustee for Helen Anderson and other daughters of Arradoul, upon their bonds of provision, the assignation bearing the trust *in gremio*, and likewise the adjudication; and having, in place of discharges taken from him, as he did from the other creditors, bills for the sums paid, and Sir William being afterwards attainted of treason, the Lords found that Buckie could not have allowance of any part of the sum so paid out of the sums for which he had adjudged as trustee for them, 8th June last;—and this day adhered, *renit.* Justice-Clerk, Kilkerran, Dun, and Tinwald; notwithstanding a former decision quoted, 4th February 1732, in the ranking of the creditors of Calderwood of Pittodrie, in the question with the creditors of Merchiston.

No. 15. 1753, Jan. 23. CAPTAIN MOWAT *against* JEAN SPENCE.

THOMAS SPENCE purchased an heritable debt of 400 merks on the estate of Dalvenan, with many annualrents, and took the right in name of William Crawford, 1st February 1735, and died in 1736, leaving three daughters, Agnes, Jean, and Sophia; and after

his death, Agnes and Jean bought Sophia's share of the succession at L.250 sterling; and after Thomas's death, he being in possession of Dalvenan by another temporary right, a gift of liferent escheat, William Crawford uplifted the rents as factor for the daughters, and counted for them to them. There is now a ranking and sale of the estate, and Agnes having been married to Captain Mowat, and in the contract of marriage having made over that debt wholly to him, and she being dead; there arose a competition betwixt Captain Mowat claiming the whole debt in right of his wife, (and for instructing her right, produced a letter from William Crawford to Agnes, dated 19th November 1735, acknowledging that the right was in his person in trust for her behoof, when Thomas Spence was alive, and a conveyance by William Crawford in 1742, after Thomas Spence's death, to Gilbert Lautie, and a formal back-bond of trust by him to Agnes)—and Jean claiming the half as heir-portioner of her father, and joint purchaser of Sophia's share. Lord Minto, Ordinary, found that the right had been purchased with Thomas Spence's money, and that William Crawford had no sufficient authority to prefer Agnes, and therefore found that the two sisters should be ranked equally. But on a reclaiming petition, we on 7th January altered, and found William Crawford's letter and Lautie's back-bond sufficient evidence of the trust for behoof of Agnes. But upon a reclaiming bill, alleging *inter alia* that Spence could not afford so large a provision, which would amount to L.600 or L.700 sterling to one daughter, while he had no remaining free gear either for his own support or his wife's liferent, or for the other two daughters; and far less would Agnes and Jean have purchased Sophia's share at L.250 sterling; therefore, (27th December) we remitted to an accountant to examine and report the state of his affairs at his death; and by that it appeared, that besides that debt, his free gear, deducting his debts, did not much exceed L.100 sterling; and therefore, as it was impossible that Agnes would have joined in purchasing Sophia's third share at L.250, had the debt been her own, we again altered, and found that the trust in Crawford's person was for the behoof of the father, and preferred the two parties equally; and this I mark to show how difficult it is, in consistence with justice, strictly to observe the act 1696. 23d January 1753, The Lords adhered.

No. 16. 1752, Jan. 22. WILLIAM KENNOWAY *against* ROBERT AINSLIE.

GEORGE AINSLIE disposed his tenement in Newbattle to his daughter Jean in 1721, and thereafter in 1723 disposed it to his brother Robert, on the narrative of sums of money paid. After George's death, Kennoway, the son of Jean Ainslie, alleged that the disposition to Robert was in trust and under back-bond; and pursued exhibition of that back-bond; wherein Robert compeared, and produced his disposition to exclude the pursuer. And in that process Mr Patrick Middleton deponed that Robert had granted a back-bond acknowledging and declaring the trust for behoof of George, in order to his carrying on a certain process; that the back-bond was lodged by George in his, Middleton's, hands, where it remained for several years, till George was on death-bed, when Robert came to him, and told him that his Brother George wanted to see the back-bond, upon which he gave the back-bond to Robert, and knew not what afterwards became of it. And William Junkison deponed that he heard Robert Ainslie own that he had