only farther say, that if any man should argue in any of the Courts of England for a preference, by a judgment in Scotland, on effects in England, he would be laughed at; and really I can hardly keep my countenance, when I see and hear it pled, that we should show them a good example.

" I am as sensible as any body can be how proper it were that some *comitas* should be observed between the two parts of the united kingdom, but that can only be done by statute, which some time or other will be, unless we by our too great complaisance mar it, &c.

" I do not know whether I should take notice of what has been argued from England being the *locus contractus*. That the *locus contractus* determines the *solennia instrumentorum*, I understand; but that I can attach effects no where else but in *loco contractus*, is what I do not understand, and much less what is pled in one of the papers, that wherever the *locus contractus* is, that ought also to be held to be the *locus solutionis;* and, therefore, pass it over in silence."

1755. *February* 8. IRELAND *against* The CREDITORS of JOHN NEILSON of Corsock.

THE deceased John Neilson of Corsock, and William Ireland of Caldow, entered into a minute of sale, whereby it was agreed that William Ireland was to dispone to Neilson the lands of Caldow. As Ireland had not made up his titles to the lands, he granted a trust-bond to Neilson for L.600, whereon Neilson led an adjudication of the lands in December, 1742, and was infeft.

Neilson afterwards became bankrupt, and upon his death his creditors led adjudications against the lands of Caldow, as well as the lands of Corsock. The proceedings of these adjudications were stopped by a sale being brought of the lands, at the instance of Richard Neilson, the apparent heir of John Neilson.

After the sale had proceeded so far that the rental and value was proved, and the sale was ready to be advised, a petition was presented to the Court in the name of William Ireland, the grandson of the deceased William Ireland of Caldow, representing that the said William Ireland elder, had in the contract of marriage of his son William Ireland, dated 15th December, 1736, disponed in favour of his son and his heirs, the said lands of upper and nether Caldow, heritably and irredeemably: That notwithstanding Corsock knew of this contract of marriage, and that Caldow was thereby divested of all right and title he had to these lands, he fraudulently entered into the foresaid transaction with Caldow, for the purchase of the same; and that Caldow being a weak facile man, Corsock had imposed upon him, and got the lands at an undervalue. That the said petitioner having made up titles to his said father's contract of marriage, had adjudged the lands of Caldow in implement thereof; therefore, praying, that as Corsock's right to the lands of Caldow was founded upon the foresaid fraudulent transaction betwixt Caldow and him, posterior to the petitioner's father's contract of marriage, the same lands of Caldow ought to be struck out of the sale of Corsock's estate.

This petition was remitted to Lord Murkle Ordinary. The creditors, besides denying that Corsock had been guilty of any fraud, pleaded, " That suppose

Corsock had acted fraudulently in purchasing the lands from Caldow, such fraud could not prejudge the petitioners, the lawful creditors of Corsock, who had adjudged the lands of Caldow as properly vested in the person of Corsock their debitor, as it could not be pretended they were in any sort partakers of the fraud alleged against Corsock."

The Lord Ordinary allowed the pursuer to prove that John Neilson of Corsock was in the knowledge of old Caldow's disposition to his son of the lands of Caldow, in his son's contract of marriage, when he made the transaction with him for the purchase, and also for the value of the lands, with all other facts and circumstances, tending to infer fraud on the part of Corsock in the said transaction, and allowed the heir and creditors of Corsock a conjunct probation.

On advising the proof, the Court 'find the reasons of reduction relevant and proven, and that the same are effectual against the adjudging creditors of John Neilson of Corsock, as well as his apparent heir, and therefore ordains the lands of Upper and Nether Caldow to be struck out of the sale of the estate of Corsock, and reduce the said John Neilson's charter and sasine of the said lands of Caldow, produced, and decern accordingly.'

In a petition against this interlocutor, the creditors admitting that the transaction was fraudulent, on the part of Corsock, still maintained that this could not operate so as to reduce the adjudications led by them, his onerous creditors, and who were not accessory to his fraud. The Court however adhered. The following is Lord KILKERRAN'S note of what passed on the bench at advising the petition:

"That singular successors in land rights completed by infeftment are not affected by back bonds, or other personal rights, or the fraud of the author, when the acquirer is not *particeps fraudis*, is a point so established, that it needs no argument. It is the very purpose of our records, on the faith whereof we are in safety to purchase.

"But 1*st*, If no infeftment has followed, and that the purchaser has only a personal right or disposition, that disposition, or other personal right, is affected by the personal deeds or fraud of the author, as all personal rights are.

"And 2*dly*, The rule only holds in the case of singular successors by voluntary rights of property, whereon infeftment has followed, but not in rights in security as infeftments of annual-rent, as these being only securities of the personal obligation, whatever extinguishes the personal obligation in security whereof such infeftments are granted, extinguishes the infeftment. And the records were not intended to secure purchasers of such rights.

"And 3*dly*, the case is the same with respect to adjudications, which in like manner are but securities, and whatever will extinguish the personal obligation on which the adjudication is led will extinguish the adjudication, and that not the less that infeftment has followed upon it. And if so, that a back bond qualifying such personal obligation, or a discharge of it, will extinguish the ground of the adjudication, the fraud of the person acquiring such personal obligation, must have the same effect, however *bona fide* the purchaser of such adjudication may acquire it.

"To apply this to the present case; if the original purchase was fraudulent, as made when Corsock was in the knowledge of Ireland's prior right, the bond taken to be the foundation of an adjudication to effectuate that purchase was no less so; and according to the above principle, that fraud must affect his creditors adjudgers.

" *February* 8, 1755.—This petition was refused.—KAIMES *solus* of a different opinion.

" After stating what is above in support of the interlocutor, which was thought just, especially by the *President*, who approved, and added, that not only was he of opinion of the interlocutor on that ground that it was a redeemable right, as had been said; but on this ground, that the creditors were only adjudgers, and that an adjudication carries the subject only *tantum et tale*, liable to all the exceptions that the right was liable to while in the person of the adjudgers' debtor.

" KAIMES put his opinion upon this, that fraud is but personal, and cannot, in the nature of the thing, affect a *bona fide* onerous purchaser; and he saw no difference between a voluntary purchaser and a legal purchaser by adjudication.

" ANSWERED.—That by our law personal rights, or *nomina*, are affected as by the voluntary deeds, so by the fraud of their author. And if it be put upon this, that Corsock was infeft, then the question turns upon the records, and these are only intended to secure voluntary purchasers of irredeemable rights."

1755. *February* 11. DAUGHTERS of WILLIAM LORD FORBES and their HUSBANDS, *against* JAMES LORD FORBES.

THIS case is reported by KAMES, and also in the *Fac. Coll. (Mor. p.* 3277.) The following is Lord KILKERRAN'S note of the opinion delivered by himself:—

" I have been long of opinion, that where one dispones his estate to his heir, *alioqui successurus*, be it in a contract of marriage, or in whatever deed it will, and reserving a power or faculty to burden with provisions to younger children, or whatever other burden it be, it is implied that he can only exerce that power or faculty *debito tempore*, or, in other words, in his *liege poustie;* and, if that is so, I believe I may venture to say, that if he can exerce the faculty to burden, when generally expressed, upon deathbed, the adding to the faculty a power to do it *etiam in articulo mortis* will not alter the case, as that were a *non obstante* to the law of the land.

" I remember a case which happened in the 1723, *Edwards* of Piercy purchased an estate, and took the right to himself and his heirs and assignees whatsoever; but, without taking infeftment, assigned the procuratory to his eldest son and his heirs whatsoever, reserving his own liferent, and a power to burden the estate with provisions to his younger children, *etiam in articulo mortis*. Upon this procuratory the son was infeft, but died without issue before his father, and the father having exerced the faculty of providing his younger children on deathbed, the daughter of the second son, as heir whatsoever by the investiture, pursued reduction of these provisions, as made on deathbed, and they were reduced accordingly, notwithstanding it was argued that as the pursuer could only take the estate on that very title which contained the reservation, she behoved to take it with the quality contained in it, for the Lords considered that as the right was first taken by the purchaser, the pursuer's grandfather, to himself, and his heirs and assignees whatsoever, his heir had thereby a *jus quæsitum* to the privilege of the law of deathbed, whereof he could not be disappointed by any