

No. 2. 1735, Jan. 28, June 13, 17. BROWN, (CLERK) *against* MANSFIELD.

THIS case was, that Mansfield had used horning, and another charged on an inferior Judge's precept, and the common debtor had disposed to this last and other trustees for the behoof of all his creditors, which was quarrelled by Mansfield and reduced by the Lords upon the act 1621 as to all creditors who had not done diligence; and the question now was, Whether the charge upon the precept could sustain the disposition *quoad* that creditor? The Lords demurred and delayed the decision.—13th June.—The Lords, 17th June, found the disposition reducible *in toto quoad* those who had used the diligence upon the precepts as well as the rest,—unanimously.

No. 3. 1735, Feb. 5. ROGERS *against* MELVILL.

THE Lords remitted to the Ordinary to enquire into and report the several qualifications, particularly what were his circumstances at the time of the sale; for some of us thought, that if his debts did not very much exceed his effects at that time, his failing in three weeks would not presume fraud *in concilio*.

No. 4. 1736, Nov. 19. FISHER *against* CAMPBELLS.

THE Lords adhered simply as to Asknish and what determined them to be unanimous was, that the deed was gratuitous, and therefore the wife, whether she was accessory to the fraud or not, she should not be benefited by her husband's fraud. But they were not clear that it was proved that the wife was in the knowledge of the fraud. They also adhered as to Malcolm Campbell, in respect it appeared the obligation was not delivered by Kirnan, one of the cautioners, till after Malcolm was dead;—but they did not think it relevant that Kirnan was discharged;—and the former decision in Sir Henry Innes's case was misrepresented as to that point.

No. 5. 1737, Feb. 25. CRAMOND *against* BAIN and HENRY.

THE question being, Whether a disposition *omnium bonorum* to a creditor in payment be reducible though the goods were really within the debt, and though the pursuer could not subsume on the act 1621 or 1696? and 2dly, *in quantum*, Whether only to bring in the creditors proportionally or *in toto*?—the Lords found the reason of reduction relevant, but only *ad effectum* to bring in the creditors *pari passu*, in respect it is not a statutory fraud but upon the common law,—and this agreeable to the former decisions in 1678; and they thought the narrative of the disposition may be abstracted, and therefore remitted that point to the Ordinary.

No. 6. 1737, June 21. CREDITORS of MAXWELL *against* GRIERSON.

THE Lords adhered to the Ordinary's interlocutor preferring the relict on her infertment, and finding it not reducible on the act 1621, because though her husband Edward's infertment was gratuitous, yet it was to an apparent-heir, and with a power to burden and

so not in prejudice of creditors ; and indeed had they found it otherwise, that would have in effect made all the father's personal debts real, at least would have preferred them to all the successors of his son and his heirs, which is the same thing.

No. 7. 1747, June 29. CREDITORS OF ROSEBERRY *against* GEDDES.

THE Lords found no proof that Geddes acceded ; 2dly, that the arrestments before the disposition are relevant to reduce on the act 1621 *quoad* the rents affected by that arrestment ; and that the inhibition is relevant to reduce *quoad* the debt on which that inhibition proceeds, though hitherto no adjudication has followed,—and remitted to the Ordinary the other points.

No. 8. 1737, Nov. 8. CREDITORS OF URQUHART, &c. *against* RELICT.

THE Lords, (28th June) adhered, and were of opinion that though Colonel Urquhart had been bankrupt and he under no previous obligation, yet he might grant provisions to his wife such as would have been rational at the time of the marriage.

Delayed (26th July) till to-morrow, that the petitioner's procurators may see the former acknowledgment as to the L.25,000 sterling, for the Lords did not incline to put their interlocutor as they formerly had done 28th June upon the abstract point of law, that a bankrupt can by a postnuptial deed grant a provision to his wife.

27th July,—None of us as I could observe were for adhering to our former interlocutor upon the general point of law, (except Arniston, who did not insist upon it,) but in respect of the claim he then had against the Sword-Blade Company, upon which he recovered L.25,000, found that the provision to the Lady was rational and not reducible on the act 1621, and, 8th November thereafter, adhered and refused a reclaiming bill without answers.

No. 9. 1740, Feb. 5, 22. Ross of Pitcalny *against* Ross of Balnagowan.

THE Lords found the qualifications condescended on not sufficient, and therefore remitted to the Ordinary to hear further. I own I had a good deal of difficulty in the case. I thought much would depend on the last Balnagowan's capacity or degree of his weakness, and as no challenge was brought for near 30 years after his death, I thought it dangerous to allow a vague proof at large of his weakness without condescending on some particular instances of his weakness, and therefore voted for the interlocutor.—28th February, The Lords adhered and refused a bill without answers.

No. 10. 1740, Dec. 5. COUPAR *against* DAVID GRANT.

A YOUNG MAN under age having granted sundry bills to a taverner for drinking and other ridiculous expenses while his father lived with his family in town ; and the father and he having raised a process against the taverner before the Sheriff on that account, the taverner got from the young man then come of age a bond for the whole sums. The Lords reduced the bond on fraud and circumvention. I own I could not agree with the words of the judgment. This was not properly fraud, but I thought the bond reducible *as contra bonos mores*.