

No. 3. 1735, Feb. 20. CAPTAIN CHALMERS *against* SIR J. CUNNINGHAM.

THE Lords first found eases were presumed where the conveyance bore in general certain sums of money, without adding equal to the sums after assigned; and that the rule of determining the extent of those eases ought to be a medium of the eases proven to have been given for debts *in eodem genere*, that is, equally preferable. (See No. 7.)

* * The case of Spréul Crawford, of 5th January 1743, here referred to, is No. 5, *voce BONA ET MALA FIDES*.

No. 4. 1736, Feb. 12. M'KENZIE *against* SIR A. M'DONALD, &c.

THE Lords found that the trust-infertment is in the Crown for the use of Murdoch M'Kenzie; and found Murdoch M'Kenzie not bound to find caution not to carry the money to England. *N. B.* It was thought that trust-infertments were not included in the vesting acts, and therefore are adjudgeable in this Court.

No. 6. 1738, Jan. 4. TRUSTEES OF THE CREDITORS OF COLONEL JOHNSTON *against* THE CREDITORS.

THE Lords found that these trustees had no claim in law to any fee or reward, *renit. Minto, Drummore, et me.* Monzie tells me that the point was decided in the same way in the case of the Trustees of Abbotshall. 19th January, A bill was refused, but it was two days too late.

No. 7. 1738, June 21. CAPTAIN CHALMERS *against* SIR J. CUNNINGHAM.

See Note of No. 14, *voce* ADJUDICATION.

No. 8. 1739, Nov. 30. ANN CRAWFURD *against* THE REPRESENTATIVES OF MR WILLIAM CRAWFURD.

See Note of No. 7, *voce* FACTOR.

No. 9. 1740, Nov. 19. THE CREDITORS OF THE DUKE OF HAMILTON *against* THE EARL OF SELKIRK and LORD DAER.

IN the question of this extraordinary disposition by the Dutchess of Hamilton, for payment of her son's debts, though the trustees had an unlimited power of agreeing with what creditors they pleased, and preferring any of them to the rest, and the creditors barred from any action against them; yet the original trustees being dead, after the Earl of Selkirk, one of them, had disposed of the subject, and therefore the trust was either now at an end, or devolved upon the Duke of Hamilton, who declares he does not oppose the creditors recovering their money out of this fund; the Lords thought there could not be a right without a remedy, (a means of attaining it) and that therefore the

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