No. 18.

duced; with regard to which point, it is of no earthly consequence whether the pursuer's sasine be recorded or not. Recording would not prefer it to the defender's prior infeftment; and supposing it not to be recorded, yet it is a real right, and a good foundation for a poinding of the ground.

The Lords repelled both the objections.

N. B. It is said the ground on which the second objection was repelled, was, that putting these words, " in absence of Thomas Stewart, notary-public," in parenthesis, then the attestation bears to be by the clerk-substitute, and that Thomas Stewart was the depute.

Fol. Dic. v. 4. *p.* 263. *C. Home, No.* 253. *p.* 407.

1750. *June* 19.

SIR ARCHIBALD GRANT *against* The other CREDITORS of TILLIFOUR.

No. 19.
Where more creditors are contained in one and the same heritable bond, one sasine for the whole is good.

A CASE is marked 10th of November 1748, between the above parties, No. 71. p. 949. *voce* BANKRUPT, where infeftments, granted by Tillifour to his other creditors were reduced upon the head of Fraud, to the effect, to bring in Sir Archibald Grant *pari passu* with them upon his infeftment, which was in date posterior, at which time the whole circumstances of the case were laid before the Lords.

It was nevertheless now pleaded for Sir Archibald, that tho' the nullities under which the other infeftments laboured were mentioned in that debate, yet the interlocutor had proceeded solely upon the fraud, and supposed the validity of the infeftments in point of form, and that it was still competent for him to object any nullity to the sasines, whereby his infeftment should become the preferable infeftment. And the nullity he insisted on was, that the sasines being in number three, one proceeding on an heritable bond, granted to James Smith and thirteen other creditors, in security of the several sums, wherein they were respectively creditors by personal bond, another proceeding on an heritable bond, granted to six several creditors, and a third on a bond to two creditors, were not taken by delivery of symbols to the creditors severally for their several interests, but by delivery of one symbol to a procurator for the whole creditors contained in the bond on which the sasine proceeded; which was said to be a nullity in the several sasines, as in the opinion of some of the most experienced writers to the signet, symbols ought to have been delivered to a procurator for each creditor in whom it was intended to create a separate right of annual-rent. *2do*, That the sasines which were taken in a hurry, after sitting up the whole night to frame them, in order to prevent Sir Archibald Grant's getting the start, had been taken without authority from any of the creditors, who were not privy to the contrivance.

Answered for the creditors, That this matter was already *res judicata*. The whole circumstances of the case, particularly the nullities now insisted on, were laid before the Lords in 1748, and had considerable effect in procuring the interlocutor then pronounced; whereby all the effect was given to them and the other circumstances, which they were thought to deserve. *2do*, Were the objections

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entire, there was nothing in them. For as to the first, the method used in the present case was no other than what is done every day. Suppose six heirs-portioners served, and obtaining a precept from the Chancery, or a precept of *clare constat*, one attorney receiving the symbols for the whole six, will vest in each of them their interest in the estate: Or where a debtor dispones his estate to his creditors in general, equally and proportionally, one attorney for the whole receiving the symbols in their behalf, will vest the infeftment in security in them all equally and proportionally; nor in such cases would it answer the intention, were it done otherwise, as the creditor to whom the infeftment was first given would have the prior right.

And that the creditors knew not of the infeftments is nothing. For however, by the Roman law, a deed *inter vivos* neither created obligation, nor transferred property, without the knowledge and acceptance of the party, yet with us the rule is the other way; for with us *acquiritur ignoranti*, whose acceptance is presumed from the nature of the grant, if beneficial to him, and that presumption is not to be elided by a proof of his ignorance, it can only be defeated by a repudiation.

Had the Lords thought that there was any thing in the objections, they would not have been ready to cut them down on *res judicata;* for so much was said when they repelled the objection to the form of the sasine, which it had been of dangerous consequence to sustain; and for the other, it was absolutely void of all foundation.

Fol. Dic. v. 4. *p.* 263, *Kilkerran*, (Sasine) *No.* 7. *p.* 505.

SECT. IV.

Clause, vidi scivi et audivi.—Clause, acta erant hæc.

1612 *December* 22. Primrose *against* Dury.

No. 20.

In an action betwixt James Primrose and Dury, the Lords found a sasine null, because it wanted these words in the subscription, "*quia novi, vidi, scivi, et audivi.*"

Fol. Dic. v. 2. *p.* 363. *Kerse MS. p.* 77.

1630. *July* 6. Lord Hermiston *against* Butler.

No. 21.

In a removing from the lands of Blanse and tower thereof, a sasine bearing tradition of earth and stone, as use is, of the lands and tower, but in the words of