

the President thought he deserved it) and found the bill with an acceptance by James Cock, false, feigned, counterfeit, and forged, by the said Forrester, and found the other five bills false and feigned, and therefore reduced them. (See No. 31. *infra*.)

No. 24.

1752. January 16. DUNLOP *against* CRUICKSHANK, &c.

FORBES and CRUICKSHANKS, merchants in Aberdeen, in Company, commissioned some lawns from Dunlop in Holland, and the letters were sometimes signed by both, sometimes only by one of them; and in a post or two after their last letter, Forbes alone commissioned some spirits, but so as to give Dunlop reason to believe it also in Company, writing in the plural number "we," and directing the marks to F. C., the initial letters of their two names, and wrote him that next day he was to take journey for Holland, which he did; and Dunlop shipped the spirits as directed, and sent the invoice and letter of advice to Cruickshanks and Forbes in Company. Forbes was then broke, and diligences against him begun; and he wrote to his friend Jopp at Aberdeen to receive and dispose of the spirits because he could not be home in time, which letter, and Dunlop's to Cruickshanks, came by the same post. Cruickshanks that very night gave the invoice to Jopp, and wrote to Dunlop that he had no concern in the spirits; and in a day or two the ship arrived on the coast with the spirits, and Jopp sold them partly to Dunlop himself and partly to sundry others. Cruickshanks bought of them about L.70 worth, deliverable at the mast, and which he sold with another parcel of his own on board the same ship, and got from Jopp a discharge of the price, and Jopp was creditor to Forbes in more than the value of the whole spirits. Forbes returned from Holland, and after a very short stay went to the West Indies, and his creditors arrested in the hands of Jopp, Cruickshanks, and sundry others, and pursued forthcoming, concluding also against Cruickshanks as partner. After a proof brought, at advising some of the Lords thought there was sufficient evidence against Cruickshanks of the copartnery, and there seemed indeed cause to suspect it, but the Court found the evidence not sufficient. The next point was Forbes's fraud, for that he was broke before giving the commission, and I should have thought the reason of reduction good had the spirits been extant, but as they were sold, my difficulty was the same as in the case of Christie, No. 20. *supra*. But I thought that here there never was a sale completed. Dunlop understood the commission to be from Cruickshanks and

No. 25.

*Effect of dolus
dans causam con-
tractu.*

- No. 25. Company, and accordingly sent the goods with invoice and bill of lading to them two, and Cruickshanks refused to accept of them, and therefore the property never was transferred ; and so the Court found, and found Cruickshanks and Jopp and other intrmitters liable to Dunlop for the price. (See DICT. No. 14. p. 4879.)

1752. February 21. DUNLOP *against* FORBES, JOFF, &c.

No. 26.

THE same Forbes while in Holland, bought another parcel of spirits for his own account, which was to be paid in ready money, and to be sent by another ship, but came to Scotland before the ship sailed, and Dunlop suspecting nothing, sent him the spirits, and wrote him to remit the money in course. Before the ship arrived Forbes was gone to the West Indies, and left a commission with Jopp to employ Spark a common partner to receive and dispose of the spirits, and Spark sold them to Robert Napier, jun. and took his receipt and obligation. Jopp was displeased with the receipt, and ordered Spark to take Napier's bill in his, Jopp's, name, and Spark returned the receipt. Jopp had the first arrestment in Spark's hands, and had also arrested in the hands of Robert Napier the father, by mistake instead of Robert Napier the son, so that Dunlop had the first if not the only arrestment in the hands of Robert Napier the son. Here again the former question occurred of *fraus dans causam contractui*, and we generally agreed that the evidence was strong of *fraus in consilio* sufficient to reduce the sale and bring back the property in competition with arresters ; but my difficulty was, that the property was transferred to *bona fide* purchasers, and could not be brought back, and Dunlop had no hypothec on the price. The Court was much divided on this point, and therefore did not decide it, but found Dunlop preferable on his arrestment in Robert Napier junior's hands, who we thought properly debtor to Forbes, and that Spark was not properly his debtor in money, though he was his trustee in the bill. (See DICT. *loco supra cit.*)

1752. February 25.

ANDREW FORBES *against* Messrs MAINS and COMPANY.

No. 27.

IN 1749 Mrs Rolland commissioned two parcels of wines from Messrs Mains and Company, merchants in Lisbon, who furnished them out of regard to her deceased husband with whom they were in use to deal, and who dealt honestly by them, and she also honestly paid these two parcels,