1767. *November* 20. —— *against* ——.

The question here was, Whether letters of inhibition could be granted upon a bond executed in the English manner? And it was determined unanimously, after some reasoning, that they could not be granted, because the diligence and forms of execution must be regulated by the law of the country where execution is sued for, not by the *lex loci* where the writ is executed; therefore an English bond, though probative in Scotland, or a ground of action, cannot be the foundation of diligence unless the authority of the Judge be interposed, either by decreet or by depending action. And it appeared from the report of the clerks, that this doctrine is carried so far in practice that, even upon a promissory-note holograph, letters of inhibition are not granted, because it is not certain, *ex facie* of the writ, that it is obligatory by the law of Scotland.

1768. *March* 7. William Elliot *against* ——.

This was a case concerning bankruptcy in terms of the Act 1696. An heritable bond was granted after the act of bankruptcy, but for a new contraction, not in security of an old debt. With respect to this, the Court had no difficulty, that it did not fall under the Act; but there was another heritable bond, which was granted prior to the bankruptcy, also for a new contraction, whereupon infeftment was not taken till after the bankruptcy. Concerning this bond there was some difficulty; but it carried, without a division, that it did not fall under the Act. The great difficulty arose from that clause of the Act which declares that, in the matter of bankruptcy, all heritable bonds are to be considered as of the date of the infeftment upon them; but these words are to be understood *secundum subjectam materiam*, that is, of bonds in security of prior debts, concerning which only the Act speaks. If, therefore, the bond in question had been a bond of that kind, at whatever time before the bankruptcy it had been granted, it would have been considered as of the date of the infeftment, and so would have been reducible; but as it was for a new contraction, the Act does not relate to it.

And here the whole system of our bankrupt laws may be shortly observed: If a man, being insolvent, dispones any subject to any person who is not his creditor, gratuitously or without a just price, the same is reducible at the instance of his creditors; but such reduction does not in my opinion operate by itself a preference to the creditor-reducer, but only brings back the subject to the common fund of payment to be affected by the diligence of every creditor. *2do.* If it be a disposition *omnium bonorum*, though in favour of a creditor, it is reducible at the instance of the other creditors, but only to the effect of bringing in the disponee *pari passu* with the other creditors. *3tio.* If the insolvent person dispones in favour of a trustee for the behoof of all his creditors, it is now established that this disposition is also reducible upon the first part of the Act 1621, as being in prejudice of the creditors, by restraining them from doing legal diligence, and obliging them to submit to the administration of a trustee whom they did not