

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