

No. 7. 1736, July 9. YOUNG *against* SMITH.

THE question was argued, whether a reduction on the act 1696 be competent for repeating the part of the price paid to the creditors; but upon a division 15th June, the Lords adhered. For the interlocutor, were Royston, Newhall, Justice-Clerk, Monzie, Easdale, Murkle, Leven. Against it were Haining, Drummore, Strichen, Tinwald, Coupar.—9th July The Lords adhered.

No. 8. 1737, Feb. 1. LORD BELHAVEN, *Supplicant*.

THE Lords, in respect of the act 1696 anent notour bankrupts, refused the Lord Belhaven's petition without answers, for they thought the petitioner's Court\* was not by that act so much as competent to judge of this crime of fraudulent bankruptcy, and far less can he repledge; and at 12 o'clock they proceeded to the examination of the prisoner.

## No. 9. 1737, Feb. 16. CREDITORS of CAVE.

THE Lords adhered to the interlocutor of the 15th as to all victual delivered before the 14th January 1735; 2dly, They adhered as to all delivered before the 18th; 3dly, They altered and sustained the reason of reduction as to all delivered on or after the 18th of January 1735.—16th February 1737, The Lords adhered.

No. 10. 1737, Feb. 24. LORD KILKERRAN *against* COWPER.

THE Lords refused and adhered unanimously, for the bankrupt was in the terms of the act 1696, whatever objection might be against the executions of the horning, since it only requires that there be a horning and caption.

No. 11. 1737, June 29. DAVIDSON *against* BROWN.

THE Lords found the deed reducible on the act 1696, and thought, that where a party is insolvent, if he goes out of the country, the law will presume that it is to shun diligence, whatever affected cause he pretends, and that though he go out of the country even before diligence.

## No. 12. 1738, Jan. 6. CREDITORS of EYEMOUTH.

THE Lords reduced the disposition, not being to the whole creditors, and preferred the creditors according to their diligence.—12th December 1733.

The Lords having on a reclaiming bill against their interlocutor, marked *supra*, 12th December 1733, remitted this cause to Lord Murkle. This day, on his report, in respect that the disposition was not to the whole creditors, nor for the whole sums due even to the creditors named in it, and that some of those omitted debts had been admitted and ranked upon the estate, therefore they found the old interlocutor in presence in 1726, and the Ordinary's interlocutor applying the same in 1737, was not a *res judicata*, and adhered to their former interlocutor, 12th December 1733, reducing the disposition. The interlocutor was almost unanimous, Dun only against it; and though they inclined much not to alter a preference settled as long ago as 1726, yet that interlo-

\* The Court of Wardenry in the Mint.

cutor bearing the *ratio decidendi* that the disposition was to the whole creditors, the consequence was, that either no creditor could be ranked, but those contained in the disposition, and for the sums mentioned in it, and that was neither just in itself, nor in the Lords' power, or if other creditors were ranked, the interlocutor 1726 behoved to fall to the ground as proceeding on an error in fact.

No. 13. 1738, Jan. 10. CREDITORS OF PATERSON, *Competing*.

(See Note of No. 5, *voce* COMPETITION.)

No. 14. 1739, Jan. 18. CHALMERS *against* M'ALLA, &c.

AN assignation of moveables and household furniture being granted 16th May 1736, by Charles Stuart, who became bankrupt in the beginning of August, when he assigned to the same creditors his tack of the house in security, which right to the tack was reduced by the Ordinary in the Outer-House on the act 1696; but Chalmers having arrested on the 7th of August, and quarrelled the assignation to the plenishing as simulate *retenta possessione*, a proof was allowed; and at advising, it appeared that the possession was retained by the bankrupt till the 8th of August, when M'Alla, the disponee, let both house and furniture to Sir John Eveline, as tenant, which was after Stuart's bankruptcy, but before the arrestment. The question was, Whether the disposition of moveables being completed before the arrestment, by actual possession, the disponee ought not to be preferred, since his disposition did not fall within the act 1696? The Lords, however, reduced the disposition, which they looked on as fraudulent;—and it is said the same thing was decided betwixt the Creditors of Commissioner Whitehall and Mr Colvill, (or Colquett.)—18th January The Lords adhered without answers.—(January 6.)

No. 15. 1739, Feb. 1. CREDITORS OF MATHIESON *against* CARLILE.

THE Lords sustained the sales by the trustees, notwithstanding of prior inhibitions at Carlile's instance, in respect Carlile qualified no damages by the sales being under the value, as they had before found in the case of Creditors of Halgreen.

No. 16. 1740, Nov. 7. KIRKLAND *against* MILLER.

WE agreed that this being a disposition *omnium bonorum* between a son and father would not be good against creditors, at least that they must come in *pari passu*; but we differed whether the bond of corroboration *in gremio* of that disposition be reducible, though the father had as summary diligence upon the bonds corroborated if he had used it, and though such a bond without a disposition would be reducible;—but it carried not, by a great majority.

No. 17. 1743, Feb. 9. CREDITORS OF HAMILTON *against* HENRY.

WE had appointed a hearing in presence upon two points in this case, Whether a person being once notour bankrupt in terms of the act 1696, if the debt in the caption on which he was imprisoned be paid, and the caption discharged, and he at liberty, he still