

to disappoint this assignation he made a sub-tack of the whole to Croll in February 1744, to commence from the preceding crop. Bowack intimated his assignation to Croll, but only some weeks after the sub-tack, and warned him to remove, and the process came by advocacy to this Court; and it being proved that before getting the sub-tack, Croll was in the knowledge of Bowack's assignation, we therefore preferred the assignation, decerned in the removing, and gave expenses; for though Croll was in possession upon his sub-tack before the assignation was intimated to him, and was therefore in that respect preferable, yet it was fraud in Beattie to grant the sub-tack, and Croll being in the knowledge of the assignation was *particeps fraudis*; and though Beattie had no power to assign his tack, yet neither he nor Croll in his right could quarrel it on that head, and Troup now consents to the assignation. 22d June Adhered, and refused a bill without answers.

No. 19. 1748, Nov. 9. SIR ARCHIBALD GRANT *against* CREDITORS of GRANT.

TULLIFOUR finding his debts exceeded his estate, and being due a great claim, he called a notary and without even acquainting his other creditors caused him make out three heritable bonds to them, and caused him sit up all night to write them, and enjoined him to keep them secret, and towards the end of the 60 days registrated them, and meantime continued communing with Sir Archibald Grant, and in about 18 months gave him an heritable bond. Sir Archibald now pursues reduction of these infestments on the acts 1621 and 1696, and upon the common law, and also objected to the infestments to more persons in one bond. The President seemed to think there might be something in that objection as to the sasine, and likewise something in the first part of the act 1621, but the rest of us thought there was little in either or in the act 1696, but we all agreed in reducing upon the head of actual fraud to the effect of bringing all in *pari passu*.

No. 20. 1748, Dec. 7, 21. CHRISTIE and COMPANY *against* FAIRHOLMS, &c.

ONE Anderson in 1746 bought from Christie and Company in Glasgow 30 hogsheads of tobacco, for which he was to grant a bill with Drysdale his father-in-law, and which tobacco he was to export from Elphinston. He sent a bill bearing to be accepted by him and Drysdale, and thereupon they sent the tobacco, which was shipped, but immediately arrested by Fairholms and others, creditors of Anderson, which produced an agreement. Anderson gave up the skipper's bill of lading in his own name, and a new bill was taken in Fairholms name and the tobacco consigned to Dunlop in Holland to be sold for the creditors account. Anderson went along, and the tobacco was sold, and the account of sales sent Fairholms, with a letter from Anderson to Fairholms to divide the net-proceeds, L.285, among the creditors, in May 1747. Thereafter Christie charged Drysdale on the bill, who suspended on this reason, that the bill was not signed by him but by a boy, who adhibited his subscription, and this question lies at an act for proof. Christie, doubtful of his success, sues Fairholms for the price of the tobacco, because of Anderson's fraud, and that the bill not being signed by Drysdale in terms of the bargain of sale, the property of the tobacco never was transferred. Most of the Lords thought the property not transferred, and that the fraud was a *vitium reale*. The President thought there was a difference be-

twixt arresters and purchaser in the way of commerce, that the arresters are liable to the same objections with their debtors, and the changing the bills of lading did not transfer the property, and it carried to prefer Christie and Company. It was so expressed, because Fairholms had raised a multiplepinding. *Renit.* Kilkerran *et me*, who agreed that it was a fraud in Anderson, but that the property was transferred by sale and delivery, and though that sale might be reduced against Anderson and even against the arrestment while that was all the right that was in them, yet they having acquired the property by the new bill of lading and sold it again, so that nobody knows now who has the property, or if the tobacco is not consumed, that Anderson's fraud could not affect them who were not partakers of it; and Kilkerran observed, that their right by having the tobacco transferred to them by the new bill of lading could not be the worse for their having had an anterior arrestment. 17th December, Refused a bill without answers and adhered.

No. 21. 1749, Feb. 22. AGNES STEWART *against* MRS C. HERON.

THE Lords refused a petition, and adhered to their interlocutor pronounced the 9th in favours of the widow of the last Captain Stewart of Phisgill for her jointure of L.50 sterling, notwithstanding her husband's own right was reduced on old John Stewart's contract of marriage in 1668.

No. 22. 1749, Nov. 10. HENRY ELLIOT *against* WILLIAM ELLIOT.

IN a reduction on the act 1621 of a disposition in 1692 which had since become the title of several purchasers, upon which long possession had followed, some of them possessed more than 40 years upon infestment, others had possessed as long but had not so early completed their titles, but the negative prescription was interrupted as to the half of the debt by the minority of one of the executors or one of the two assignees of the creditor. Both the debtors pleaded the negative prescription of this reduction, and one of them pleaded the positive prescription. The Justice-Clerk found the half of the debt lost by prescription, and sustained action as to the other, and repelled the defence of the negative prescription pleaded for one of the defenders Sir James Stuart, but sustained the defence on the positive prescription for William Elliot; and on advising a reclaiming bill and answers, we seeming to be of different opinions appointed a hearing in presence, which was well argued, particularly by Lord Advocate against the interlocutor. (*Vide* my notes on the petition*) and Lord Advocate noticed most of the topics;—and on the hearing the Court observing that the purpose of this process was to oblige a third or fourth purchaser at the distance of 57 years to prove the onerous cause of the disposition to his remote author 1692, they appointed them to be heard on that point, and on the hearing unanimously found the defender not bound to astruct the onerous cause of that disposition.

No. 23. 1751, July 16. CASE FOR HERDS.

IN the complaint of forgery the Lord Advocate against John and David Herd for forging *inter alia* the acceptance to a bill of two persons of the name of Officer, after

* See Note of No. 33, *voce* PRESCRIPTION.