and Rae, and did the same afterwards 5th February 1742 Nisbet against Baillie; and 2d June, on a reclaiming bill by the creditors, adhered. Again found 14th June 1743, Govan against William Hay.

*** In the case of Nisbet, the Lords adhered to my interlocutor, as to the inhibition and adjudication, but prejudice to be heard on the extent of the sum truly paid.

No. 9. 1743, July 19. TUDHOPE *against* HIS WIFE and CHILDREN.

I reported *ex parte* a question to the following effect;—Tudhope, by a bond of provision, became bound to lay out and bestow 4000 merks and to take the securities to himself in liferent, and to his wife to a certain extent in liferent, and to the children of the marriage in fee, and providing also certain parts of the conquest to the wife in liferent and the children to be procreate in fee,—and friends named at whose suit execution should pass; —and they raised and executed inhibition upon it. Tudhope the father having sold some land, the buyer suspends the minute on account of this inhibition,—which coming before me I found that that encumbrance behoved to be purged;—and in order to that Tudhope raised reduction of the inhibition, which was remitted to me,—and I sustained the reason of reduction in so far as concerned the clause of conquest, and repelled it as to the wife's liferent of the sum certain. But as there was no compearance for the defenders, the wife and children, I reported the question as to the children's interest by the bond of provision, and the Lords sustained the reason of reduction, for they thought the father was fiar and therefore might dispose.

No. 10. 1749, Feb. 22. ROBERT BLACKWOOD *against* MARSHALL, &c.

MARSHALL on a decreet of ours charged Blackwood with horning, and executed inhibition. Blackwood complained of the inhibition as invidious, and upon the vote, five and the President were for stopping, but it carried to refuse. *Pro* were Milton, Minto, Drummore, Dun, Strichen, *et ego*. *Con.* were Kilkerran, Justice-Clerk, Monzie, Murkle, Shewalton, and President.

No. 11. 1750, Jan. 16. CLEUGH *against* WILLIAM SELLERS.

LANDS being purchased after inhibition, and afterwards reduced *ex capite inhibitionis*, and then adjudication led, which is as old as 1711; the adjudication was found effectual against the purchaser as to all the legal consequences of it, not only the accumulations, but also the benefit of the legals expiring, agreeably to the decision, 28th January 1738, Corsan against Rae, (No. 4.) and 3d December 1741, and 2d June 1742, Stewart against Dunbar of Burgie, (No. 8.)

No. 12. 1750, Feb. 2. CREDITORS of HOPE of Kerse, *Competing*.

IN 1734 a process of maills and duties was raised by Horsburgh, and the creditors having raised a multiplepoinding, four other creditors compeared, viz. the Society for

Propagating Christian Knowledge, Watson's Hospital, Johnston of Kirkton, and Mrs Ann Hope, who applied for a sequestration, the petition was remitted to the Ordinary, when Sir Alexander compeared, and said the estate was more than sufficient for these creditors, and for a competent aliment to him; and the creditors said they did not oppose an aliment,—and the ordinary sequestrated, and reserved to Sir Alexander his house and parks, and about L.790 to be paid by the factor. This was in January or February 1736. Thereafter in 1736 a ranking and sale was raised, but slowly insisted in, and meantime Sir Alexander went on contracting new debts, and creditors till then only personal adjudged, till January 1744, when the creditors observing that there would be a deficiency petition to recall the sequestration; but some creditors not consenting, it was refused, till January 1745, that on a new petition it was recalled. The whole aliments amounted to L.22,000, and the postponed creditors insisted that it should be proportioned on all the creditors, as expenses of ranking are by the act, since all the creditors consented, and instanced two precedents, of Bailie Stewart in Elgin's creditors, touching his aliment, and Bailie Hamilton in Abbay's creditors, touching his funeral expenses; but as the sequestration was awarded only in a maills and duties and multiplepoinding, where there were but five creditors, on a representation that the remainder was more than sufficient for their debts, when there was not so much as a process of ranking and sale raised, and all the debts then on record by infeftments or adjudication were truly far short of the estate;—the Lords considered this as not a *commune negotium*, but rather as a sequestration of part of the debtor's estate,—they found that the aliment could not be stated as any of the fund or subjects to be divided, but only the rents, deducting that aliment, and that the deficiency through that aliment could only affect the postponed creditors. *Renit. multum* Kilkerran.

In the same process a question occurred of the operation of an inhibition, whether it affected all posterior contractions equally and proportionally, or only the least preferable, agreeably to the decision 1747 in the case of Campbell of Whitehaugh, (DICT. No. 48. p. 6974.) The postponed creditors said that decision was where all the posterior creditors were real by infeftment, and the creditors acted on the faith of the records, whereas here the posterior contractions were all personal, with whom the records had no concern. Answered for the preferable creditors, That the point mentioned in the former case and whereupon the decision proceeded, was that inhibitions could only reduce posterior debts that were to their prejudice, and there was no prejudice while there were sufficient funds to pay the whole, and therefore they could only reduce those that exhausted the price; 2dly, That of the then posterior contractions some had adjudications on them before the other debts were contracted, therefore they must be equally secure as if they had then got infeftments or had inhibited, and could not be prejudiced by new debts contracted after these adjudications; that that consideration had moved the accountant to propose a third scheme, viz. that debts contracted after adjudications, where both debts were after inhibition, should be first burdened before these adjudgers,—but said that in this very case that would be altogether inextricable. The Lords found that the inhibition should affect only such debts contracted after inhibition as were least preferable, *renit.* Drummore *et* Kames. The President declined himself, and the Lords put me in the chair because I was reporter.