No. 25. Company, and accordingly sent the goods with invoice and bill of lading to them two, and Cruickshanks refused to accept of them, and therefore the property never was transferred; and so the Court found, and found Cruickshanks and Jopp and other intromitters liable to Dunlop for the price. (See DICT. No. 14. p. 4879.)

1752. *February* 21. DUNLOP *against* FORBES, JOPP, *&c.*

No. 26. THE same Forbes while in Holland, bought another parcel of spirits for his own account, which was to be paid in ready money, and to be sent by another ship, but came to Scotland before the ship sailed, and Dunlop suspecting nothing, sent him the spirits, and wrote him to remit the money in course. Before the ship arrived Forbes was gone to the West Indies, and left a commission with Jopp to employ Spark a common partner to receive and dispose of the spirits, and Spark sold them to Robert Napier, jun. and took his receipt and obligement. Jopp was displeased with the receipt, and ordered Spark to take Napier's bill in his, Jopp's, name, and Spark returned the receipt. Jopp had the first arrestment in Spark's hands, and had also arrested in the hands of Robert Napier the father, by mistake instead of Robert Napier the son, so that Dunlop had the first if not the only arrestment in the hands of Robert Napier the son. Here again the former question occurred of *fraus dans causam contractui*, and we generally agreed that the evidence was strong of *fraus in consilio* sufficient to reduce the sale and bring back the property in competition with arresters; but my difficulty was, that the property was transferred to *bona fide* purchasers, and could not be brought back, and Dunlop had no hypothec on the price. The Court was much divided on this point, and therefore did not decide it, but found Dunlop preferable on his arrestment in Robert Napier junior's hands, who we thought properly debtor to Forbes, and that Spark was not properly his debtor in money, though he was his trustee in the bill. (See DICT. *loco supra cit.*)

1752. *February* 25.

ANDREW FORBES *against* Messrs MAINS and COMPANY.

No. 27. IN 1749 Mrs Rolland commissioned two parcels of wines from Messrs Mains and Company, merchants in Lisbon, who furnished them out of regard to her deceased husband with whom they were in use to deal, and who dealt honestly by them, and she also honestly paid these two parcels,