

though she had been broke in 1748, and obtained a *cessio bonorum* against her creditors, of which the Mains were ignorant. In 1750 she commissioned a third parcel from them, which they also sent, but upon its arrival at Leith, Andrew Forbes, one of her creditors, arrested it for a debt prior to the *cessio*, and pursued forthcoming in the Admiralty-Court. Appearance was made for Messrs Mains, and a reduction of the sale repeated on the head of fraud, because Mrs Rolland was bankrupt before she commissioned the goods, of which the Mains were ignorant. The Judge found that the fraud impeded the transmission of the property, and therefore preferred Mains. The arrester pursued reduction of the decret; but on report, we repelled the reasons of reduction and assolizied. (See DICT. No. 41. p. 4937.)

No. 27.

1752. June 17.

RANKING of BURD'S CREDITORS, viz. PARISH of CRANSTOUN *against*
MRS SEATON and WILLIAM ROBERTSON.

EDWARD BURD, 15th September 1739, disposed his lands to Mrs Seaton, and sasine was taken on it that day. 24th September 1739, Mrs Seaton gave a back-bond qualifying it, that it was granted in security of a bond of L.70 sterling, granted said 24th September, and another bond of the same date to John Young of L.100 sterling, bearing to be the balance of accounts and certain other debts. We found that that infestment could not be sustained for the L.70, because lent after the date of the sasine, in terms of the act 1696, nor for the anterior debts, because the granter was within 60 days notour bankrupt, also in terms of that act.

No. 28.

1752. June 26.

EARL of SELKIRK, and UDNEY of Udney, *against* CREDITORS of LIDDER-
DALE of Tors.

AN estate being encumbered by real debts beyond its value, a ranking and sale was pursued, wherein these real debts only were produced; and it being discovered that there was a defect in the manner of making up the bankrupt's own titles, these real creditors entered into a compromise, dropped the process, completed the bankrupt's titles, and on a commission from him made a voluntary sale of his estate: After which two personal creditors adjudgers wakened the former process, and objected to the rights of the

No. 29.

- No. 29. real creditors as void and null, for that the bankrupt's own titles (upon which their infestments depended) were only completed after his bankruptcy, and after the process of ranking and sale. Lord Drummore repelled the objection, and we adhered.

1753. February 6.

CHATTO'S CASE.

No. 30.
Forgery.

THE Lords found, that they might take trial of a forgery of a writing, though it was not produced, and certification had been pronounced against it, and the defender said he burned it, though it was alleged for him that in that case the actual forgery could only be tried in the Court of Justiciary; and they granted the Duke of Roxburgh, complainer, a diligence to cite witnesses to prove it. *Vide inter eosdem voce* WITNESS. *Vide* 26th January 1670, Captain Barclay's Case.

1753. February 8.

HUMPHRY PARSONS, &c. EXECUTORS of JOHN BROWN, and HIS MAJESTY'S ADVOCATE, *against* JAMES SMITH.

No. 31.
Forgery.

IN a trial of forgery, Humphry Parsons, &c. executors of John Brown, and his Majesty's Advocate, against James Smith, of a receipt of L.69 sterling by Brown to Smith, in part payment of two bills, all of Smith's handwriting, but which bears to be signed by Brown at Edinburgh the day before he was cut for the stone, whereof he died in a few days; we could have no direct proof, but the evidence of the forgery was quite convincing at the same time by the proof. Smith had in the country the character of an honest man, and though a very low man originally, a common carrier, yet had acquired great trust in the country; therefore though we found the receipt forged, yet we would not remit him to the Court of Justiciary; and gave the same judgment as in Forrester's case, No. 24. *supra*, viz. pillory and transportation for life.

1753. March 2. ALEXANDER IRVINE *against* Mr RAMSAY IRVINE.

No. 32.

IN the reduction Alexander Irvine against Mr Ramsay Irvine, the Lords reduced on fraud and circumvention marriage articles entered into by the