

No. 7. 1748, July 15. HUGH CAMPBELL *against* WILLIAM BARRY.

CAMPBELL sold Barry 58 cows, and got his bill for the price, payable 1st February 1746, and it was agreed that the cattle should remain in the seller's parks of Kilsyth till the buyer could dispose of them, and take them away, and in the mean time they were marked by the buyer's mark, and he afterwards carried off 32 cows, leaving 26; and thereafter one M'Donald, who had been Campbell's herd, and had the charge of the parks, (Campbell being at a great distance) joined the Rebels, and hounded them out to take away the remaining 26 cattle; wherefore Barry suspended his bill for the price; and upon a proof Minto found Campbell liable for the villany of the servant M'Donald. But on a reclaiming bill we found him not liable. *Renit.* Justice-Clerk, Minto, Drummore, Kilkerran.

No. 8. 1749, Jan. 31. ROBERTSON *against* MELVILL and LIDDELL.

ROBERTSON sold the victual in his granaries to Melvill, deliverable on the seller's risk at Carron water. Part of it perished by storms in the voyage; and Melvill and Liddell sued Robertson for the profits he would have made if it had been delivered, because it was on his, (Robertson's) risk; and Kilkerran found Robertson liable. But we altered, and found him not liable.

No. 9. 1752, Jan. 25. CREDITORS OF RODERICK CHALMERS.

IN the ranking and sale of Chalmers's effects, there were among other subjects two houses encumbered with a liferent, and valued the one at 9 the other at 10 years purchase, and exposed to sale four times at that price, payable on the determination of the liferent, in the usual form, but were not purchased. None would offer the sum; and a petition was presented in name of the whole creditors, whose debts the petition said far exceeded the value of the subject, stating the case and the difficulty of finding purchasers in these terms, and the disadvantage to the creditors in having the price only payable at so distant a term, and therefore praying, as it would be more beneficial to them, to set them up at two years purchase of both; and that though the apparent-heir was not in the country to consent, yet he could have no prejudice, because the highest value of the subjects was far short of the debts. This prayer was so unprecedented, that the Lords could not grant it. And I thought that in every sale of a bankrupt estate encumbered with liferents, the subject ought to be turned into money as quickly as possible, and that at the present value it would give, which would be doing in effect the same thing *quoad* the creditors, that the 20th act 1690 empowers the Court to do as to liferent escheats, only we have no authority to compel other liferenters to sell, which would not be reasonable; but I thought that would require a regulation of the Court, and likewise a proof of the value of the chance, that is, the value of the lands presently payable, the buyer taking his hazard of the liferent.