

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.

examining several witnesses these Officers were adduced by Lord Advocate, because the complaint was singly at his instance ; but as they had a direct interest in and might gain or lose by the issue of the cause and get free of the bill if it was improven, for then the bill would either be cancelled by this Court or by the Court of Justiciary, if we should remit them to that Court,—therefore we sustained the objection and would not examine them.

No. 24. 1751, Nov. 7. JOHN FORRESTER'S CASE.

JOHN FORRESTER bought about L.600 sterling worth of iron from John Jamieson and Partners of the Rope Manufactory at Leith, and very soon after broke, and they compounded with him for ten-sixteenths of the price provided he would give them good bills for the money. He sent them from Glasgow six several bills indorsed to them, but upon enquiry they could get no account of the acceptors, in number five, except one Cock, merchant in Crieff, who denied his subscription, and one Calpine that had been a tobacco cutter in Glasgow, but was gone before the dates of his bills, and as was said since dead, and they could not learn whether any such persons as the other three pretended acceptors ever had a being. They therefore presented a summary complaint to us charging him with forging these bills. Forrester owned that Cock, merchant in Crieff, was not the acceptor, but another Cock had taken that designation, and he owned that none of the bills but Calpine's were due to him, but that he had got them to give his creditors on his giving his obligation to return the bills or give goods to the value. He brought a sort of proof that there was another James Cock that kept an alehouse in Crieff, and that the person who gave him the bills accepted James Cock, (which, as well as all the other bills were of Forrester's own hand-writing,) after giving them, took an opportunity before the company then present to bid him Forrester direct to him merchant in Crieff, but could not produce any of the acceptors or tell where they were. Great pains was taken by the complainers to recover Calpine's true subscriptions, and very undue practices were used by Forrester and his friends to suppress them, for which we punished his brother-in-law Wells, (*Vide* No. 33. *voce* WITNESS.) The proof was argued and advised yesterday. We were all convinced that the whole of these bills were forged, but our proof as to Calpine was not very clear, and as to the bills, that it did not appear whether there were such persons as the pretended acceptors,—though that was a *species falsi* and an egregious roguery, we doubted if it was such a forgery as was by our law and custom punished capitally,—but we agreed that the bill said to be accepted by James Cock, merchant in Crieff was a forgery in the properest sense, because here was a true man, and his name and designation agreed to no other person, and if the other person mentioned by the prisoner assumed that name and designation with the prisoner's knowledge, which must have been the case since he was intimately acquainted with him, and wrote both bill and address, then both were guilty of the forgery. Yet as the prisoner seemed not to intend that diligence should go on it against the true man, we agreed not to remit him to the Justice-Court, (though the President thought he deserved it) and we pronounced the following interlocutor, “ Find the bill, &c. with an acceptance by James Cock, &c. false, feigned, counterfeit, and forged by the said John Forrester ; and find it proved that the other five bills are false and feigned, and therefore reduce,” &c. (*Vide* full copy on the prints.)