

- 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 intrmitters liable to Dunlop for the price. (See DICT. No. 14. p. 4879.)

1752. February 21. DUNLOP against FORBES, JOFF, &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 obligation. 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,

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.