

ing of the *cessio bonorum* sent to her and she paid honestly; and in 1750 she commissioned a third which they sent to her; but on its arrival at Leith Andrew Forbes arrested it for a debt prior to the *cessio*; and in the process before the Admiral compearance was made for the Mains, and they insisted in a reduction of the sale of the wines upon fraud, because Mrs Rolland was bankrupt and had obtained a *cessio* before she commissioned it, of which they were ignorant, and therefore the wines were still theirs and they ought to be preferred to the arrester. The Judge-Admiral found that the fraud impeded the transmission of the property, and preferred Mains and Company. Forbes pursued reduction of the decret, and on report by Lord Kames, we repelled the reasons of reduction and assolizied.

No. 28. 1752, June 17. RANKING of BURD'S CREDITORS, &c.

IN the competition which was between the parish of Cranston, Mrs Seaton, and William Robertson, we found, that Edward Burd's disposition of his lands to Mrs Seaton 15th September 1739, and sasine following on it the same day, and which was qualified by her back-bond dated 24th September 1739, that the same was for security of certain former debts and of a bond then granted, (that is the said 24th September) for L.70 sterling then lent by Mrs Seaton, and of another bond of the same date to John Young of L.106 sterling bearing to be the balance of accounts,—could not be sustained as a security for the L.70 sterling in terms of the act 1696, in respect the debt was contracted after the date of the sasine, and was void and null as to the L.106 and other anterior debts, in respect that he was notour bankrupt in terms of the said act within 60 days.

No. 29. 1752, June 26. EARL of SELKIRK, &c. *against* CREDITORS of LIDDERDALE.

IN a ranking and sale where the estate was more than exhausted by real debts, the last preferable at last discovered a defect in the bankrupts own titles or infestment which would void all the infestments of the creditors as *a non habente*, upon which they entered into a compromise. They completed the bankrupts titles to make them accresce. They dropped the process, and sold the lands upon a commission from him. Now two personal creditors who had not compeared in the process adjudged and wakened it, and objected to the real creditors that their infestments were null till they completed the common debtors titles, which ought to be reduced as done after his bankruptcy, and after the process of ranking and sale; but Drummore repelled the objection, and this day we adhered.

No. 30. 1753, Feb. 6. CHATTO'S CASE.

CHATTO being accused of forging a writing as granted by the last Duke of Roxburgh in favours in general of the feuars of Kelso, which does not now appear, and which Chatto on his examination said that he burned,—the pursuer's petition and complaint being answered, the pursuer craved a diligence for proving. Lockhart alleged, that as the writing was not in Court, we could not proceed to try the forgery, which he said never was done except in Captain Barclay's case in 1669 mentioned by Sir George M'Kenzie, for that there

was no *corpus delicti*, that there was already a certification against it as to all civil effects, and the actual forgery could only be tried by the Court of Justiciary. The Lords notwithstanding gave a diligence to prove, for they thought that a pursuer who had got a certification in absence, perhaps against a party out of the kingdom, but who at the same time could prove the actual forgery, could not be obliged to rely wholly on the validity of his certification, but might bring his proof of the forgery in case the writing should afterwards appear, whether the forger could be punished or not; and in Barclay's case they took the proof, as is observed by Sir George M'Kenzie, and Lord Stair, 26th January 1670. (See No. 37. *voce* WITNESS.)

No. 31. 1753, Feb. 8. HUMPHRY PARSONS, &c. *against* JAMES SMITH.

SMITH was accused by Humphry Parsons, &c. executors of John Brown, and his Majesty's Advocate, of forging a receipt by Brown to him of about L.69 sterling in part payment of two accepted bills due by him to Brown, which receipt was written by Smith and said to be signed by Brown the day before he was cut for the stone, whereof he died. We had evidence of the forgery quite convincing, though there could be no direct proof, at the same time that Smith seemed by the proof to have had the character of an honest man, and though a very low man, a carrier, yet had great trust in the country. We found the receipt forged, but would not remit him to the Justiciary, but gave the same judgment as in Forrester's case, viz. pillory and transportation for life. Forrester's case is marked 7th November 1751, (No. 24.)

No. 32. 1753, March 2. ALEXANDER IRVINE *against* RAMSAY.

IN 1743 Mr Alexander Irvine of Sapphock, Advocate, entailed his estate on a series of heirs, of whom this pursuer was one, but reserved powers to alter. In December 1744 he married his only daughter to Ramsay the defender, settling marriage articles with Sir Alexander Ramsay of Balmain at a country change-house called Gilliebrands near Aberdeen, whereby he settled the property of his estate on Ramsay, and after the marriage a formal contract of marriage was executed with a small variation that he insisted on in favours of his daughters, but even during his life he did not seem pleased in his own mind with the terms of the contract. However, he lived in perfect friendship with his son-in-law Mr Ramsay and with his daughter, (who at her marriage wanted four weeks of eleven years of her age) and as he was declining fast in his health and strength, gave Mr Ramsay a factory for managing his affairs, and died in the end of November 1746. The young Lady and her husband lived also in perfect harmony together till her death in 1750, and she made over to him a pretty considerable personal estate that descended to her by her father's death, but by her death and the death of the other intermediate heirs, Alexander Irvine, son of John Irvine, Writer in the Chancery Office, who became next heir by the entail 1743, pursued reduction of the marriage-articles and contract of marriage with Mr Ramsay on the head of fraud and circumvention, as well as of incapacity of Sapphock by reason of his many infirmities,—and a very long proof before answer was brought on both sides, which was advised the 25th June 1752. The qualifications of fraud were very numerous, the Lady's non-age, the father's incapacity, at least great weakness, the machi-