And lastly, Lord Pitfour was of opinion, that the words, *of line*, were not superfluous in this description, and that, according to the strict propriety of words, Sir John was not called; but he said that Lord Caithness had explained his meaning to call Sir John, by some private letters of correspondence produced, which were written both before and after the settlement was executed.

1766. *August* 5. CREDITORS of EWART.

THIS man Ewart, when he found himself bankrupt, went to some of his creditors, who were his nearest friends, and informed them of his situation, and with respect to one of them he went so far as to indorse certain bills to him for his payment; but the creditor, knowing that these indorsations would be reducible upon the Act 1696, arrested in the hands of the debtors in those bills, and the question was, Whether he was to be preferred upon these arrestments, or the other Creditors to come in *pari passu* with him?

It was allowed by all the Lords that this case fell neither under the Act 1621, nor the Act 1696; but Lord Pitfour said that there were frauds in this matter at common law, which fell not under either of those statutes: Such was the case of a disposition *omnium bonorum* by a debtor to any one creditor, which was reducible, because there was *fraus in re ipsa*, not upon the statute, but only to the effect of correcting the iniquity, by making it a disposition in favour of all the creditors. Such was the case of *Sir Archibald Grant* and *Tillyfour* in 1748; and such also was the case of *Brown* and *Gillespie*, in 1754, and which comes up to this case, for there *Brown*, the bankrupt, made a sale of certain of his subjects to a brother-in-law of his, for an adequate price indeed, but which some of his creditors, being his friends and nearest relations, immediately arrested in the hands of the purchaser, but the Lords would give them no preference upon this transaction, which they understood to be collusive betwixt the debtor and them. The case was also quoted of processes of forthcoming upon arrestments, in some of which the principal debtor allows decreets to go easily in behalf of the favourite creditors, while he makes opposition to others; notwithstanding which the Court brings them all in *pari passu*, that it may not be in the power of the debtor partially to prefer one creditor to another.

On the other hand, it was said, that there was no law to stop the diligence of creditors, and that it was impossible to know where to stop if the Court should enter into an inquiry where the creditors have got the information which directed them in leading their diligence. It carried, by the President's casting vote, to bring in the arrester and the other creditors *pari passu*;—*dissent.* Auchinleck, Coalston, and Alemore.

This judgment adhered to by a great majority, 16th December 1766.

It was said that another arrester had got his information from the debtor, and it was also objected to his arrestment that it was laid upon an admiral precept, when the cause was neither mercantile nor maritime. But as the Lords differed upon this last point, and as it did not appear but the creditor might have been

otherwise informed of his debt, it carried, by a majority of one, to repel the objection to his arrestment.

N.B. Lord Pitfour said, that, in the case of reduction, upon the Act of Parliament 1696, the alienation ought not to be reduced *in totum*, but only so far as it was in prejudice of the other creditors, as in the case of a disposition *omnium bonorum*; but he said the decisions of the Court had gone the other way, and the words of the Act of Parliament were strong.

1766. *August* 6. CAMPBELL of OTTER *against* WILSON.

THIS case I have mentioned before, 26th June 1766. To-day a pretty general point occurred concerning the doctrine of prescription:—I get a disposition of lands *a non domino*, which I make a title of prescription: in the assignation to the maills and duties, a liferent of a part of the lands is excepted, and it is declared that the disposition is with the reservation of this liferent: now this liferent proceeded *a vero domino*; afterwards I make a bargain with the liferenter, and possess the lands upon an assignation from her. The question is, Whether this possession can be imputed into the years of prescription?

Lord Coalston maintained that, when a man had two titles in his person, as in this case, the disposition to the property and his assignation to the liferent, he might ascribe his possession to either; and he said it was the same case as if the prescriber here had acquired a wadset right, or any other incumbrance proceeding *a vero domino*.

On the other hand, Pitfour and Kaimes maintained that *nemo mutare potest causam suæ possessionis*, at least not in a question with a *verus dominus*, from whom the title of possession proceeded; and they said it was the same thing as if the prescriber had taken a tack from the liferenter, the possession upon which tack he could not ascribe to another title, in prejudice either of the liferenter, or the *verus dominus* from whom she derived her right. But the President put his opinion upon the specialty of the exception of the liferent right in the disposition; and it carried, *dissent. tantum* Coalston, That the years of the liferent were to be deduced.

N.B. The general principle maintained by Pitfour and Kaimes, I think, is wrong, nor will the maxim of *nemo mutare potest*, &c. apply to such a case as this; for it only applies to the case where I acquire a new title, and would set it up against the person with whom I have contracted, and from whom I derive my right to possess; as, for example, if the prescriber in this case had acquired any other title to the lands, and had set that up against the liferenter, from whom he had taken the assignation, or, as if a man took a tack of lands from me, and then acquired a right from any other body, and upon that pretence refused to pay the rent. But this will not apply to the *verus dominus*, with whom the prescriber never contracted or agreed; and, therefore, whatever way he got the possession, suppose even upon a