No. 11. 1742, June 4. BURDEN *against* WHITEFOORD of Dunduff.

THE Lords seemed clear that Dunduff's right could not be reduced, as *a non habente*, because John M'Whirter, younger, for whom Kennedy of Baltersan purchased died in the state of apparency and was not infeft, whereby Baltersan's infeftment on his resignation was void as *a non habente;* yet an adjudication in implement on a charge to enter heir having followed on the disposition, that adjudication may be completed *quandocunque.* But then as Baltersan's and Arbuthnot's his heir's right was only personal because of the nullity in their infeftment, they found that the fraud of Baltersan was competent against Dunduff the purchaser from his heir, and that notwithstanding the former absolvitors obtained by Dunduff against James M'Whirter, in respect that decreet was founded on an error, viz. that his author had a lawful infeftment;—and so far we all agreed. But the Lords also further found that the proof led against Arbuthnot of the fraud in that very process wherein Dunduff was assoilzied, and after that absolvitor was extracted, was good evidence in this process against Dunduff, but prejudice nevertheless to elide it; whereas others thought that as he was rendered secure by that decreet-absolvitor, and was not bound further to notice the proceedings, the proof behoved to be again led, but such of the witnesses that were dead, that their testimonies might be repeated. But this point carried only by the President's casting vote.—17th June Adhered, but allowed the defender to re-examine the witnesses yet alive.

No. 12. 1744, June, July 26. CREDITORS of AUCHINBRECK *against* LADY AUCHINBRECK.

SIR JAMES CAMPBELL of Auchinbreck six months after his marriage with his present Lady, who had staid in his family as a sort of governess to his children, gave her a provision of L.100 sterling *per annum*, and a house and some land, and thereon she was immediately infeft, when his estate was about L.10,000 Scots rent, but above L.21,000 sterling of debt, much more than the value of the estate, on which there were then infeftments or inhibitions for about L.86,000 Scots, and in 1739 it was sequestrated. The creditors objected to this right as postnuptial and gratuitous, and, being by a bankrupt, irrational. The Lords sustained it for L.50 sterling, to which they restricted it, and the creditors having reclaimed without answers we adhered, *me quidem renitente.*

No. 13. 1744, Nov. 14. SNODGRASS *against* CREDITORS of BEATT.

I WAS in the Outer-House. The Lords found a disposition *omnium bonorum* to trustees for behoof of creditors, preferring *pari passu*, not reducible at the instance of other creditors who had *parata executio*, but used no diligence before nor for a year after the disposition,—though several creditors thereby preferred *pari passu* had no *parata executio.*

No. 14. 1744, Nov. 30. MARION WILSON.

A DEED to a defunct being reduced against the heir on the fraud of the defunct when no *mala fides* of the defender could be qualified, we found the defender not liable in expenses, although he represented the defunct.