fall under any of the clauses of that act, because it was not for payment or security of a former debt but a *novum debitum*; and though the infeftment was not taken for nine months, while Home was not himself distressed, they thought they could not split the heritable bond, and make the obligement to relieve of the true date it bore, and the disposition of the date of the infeftment; yet being a *novum debitum*, it fell not under the sanction of that act, and as this last clause is relative to the former, it only concerns rights granted originally in security or for payment of an anterior debt, that it is not within the sanction of this clause; and of this opinion the President, as well as most of the Lords, was clear, notwithstanding the contrary judgment in the case of Colonel Charteris and Creditors of Merchiston. *2dly*, They also thought, that the infeftment being on Moffat's disposition, and not on George Burnet's, it was not in the terms of that last clause, agreeably to the decision in the case of Colonel Charteris against Creditors of Blair, and of the Creditors of Prestonhall; but the President doubted of this last point. However, they assoilzied from the reasons of reduction, on my report.

No. 28. 1752, Nov. 16. CRAWFURD *against* STIRLING, &c.

A CHAPMAN at Hamilton having stopped payment when he was debtor to Stirling and Company, Stirling went to Hamilton and bought shop goods to the amount of the debt. An account of the goods bought was made out and discharged by the chapman, and Stirling discharged his bills to the Company; and some days after one of the partners of another Company to whom he owed money also went and bought goods to the value, and also to the value of a bill he owed another person, and who entrusted him with the bill, but without any indorsation, and he also got a discharge of the goods bought, and discharged both the Company's debt and that other person's; and all the difference betwixt the two sales was, that Stirling bought in name of the Company, but the partner in the other Company bought in his own name, and applied the price in payment of a debt due the Company, and to another. Robert Crawford, another creditor of this chapman, raised horning and caption and rendered him notour bankrupt in terms of the act 1696, and arrested in the hands of these Companies and pursued forthcoming; which coming before me I allowed a proof of the libel, and of the qualifications of the act 1696, without a formal process of reduction; and the proof being this day advised, the defenders insisted that sales of moveables, or giving them in payment of debts, fell not under the 1696, which only mentions dispositions and assignations, and other deeds, which must mean deeds in writing; *2do*, That the sale was not reducible being for an adequate price, and the debtor might lawfully apply his ready money for payment of debts, notwithstanding the act 1696, as we found 26th January 1751, Forbes against Brebner, (*supra*,) and much more where the purchase was by one person, and the money applied to pay a debt due to another, and quoted from the Dictionary a case in January 1733 of Bailie Arbuthnot.* Lastly, They objected that Stirling was dead and his heirs not called, therefore the process could not proeeed against that Company till the process was transferred against his heirs. The Court had no difficulty but as to the last, the transferring the process against Stirling's heirs; and I observed, that if he was not in the field the Company was not in the field, that it was therefore necessary to call him in the process, as

* DICT. No. 198. p. 1228.

was done; and if that was necessary, then he being dead, the process behoved to stop till his heirs were called. The President agreed that it was necessary at first to call him, but the Company being in the field they were still in the field, notwithstanding his death; and upon the question the objection was repelled; *renitent.* Kilkerran, Kames, Woodhall, *et Me;* and we unanimously repelled the other defences, and decerned in the forthcoming.

BASTARD.

No. 1. 1747, June 20. REID *against* OFFICERS OF STATE.

THOMAS REID, as creditor to one now deceased, who was a bastard, pursued a process of cognition, and adjudication of his estate heritable and moveable, against the Officers of State, for having it declared that the defunct was a bastard, that the pursuer was a lawful creditor, and that the estate was affectable for his debts, and therefore to be adjudged to him. The Ordinary had allowed him a proof of the bastardy, and so it came before us as concluded to advise that proof. At first we doubted of that form of process, and therefore delayed till this day, when we agreed that the estate was liable and affectable; and where there was no donatar intromitting, thought this was the only way competent to a creditor, agreeably to Stair, Tit. CONFISCATION, § 46 and 47.

BATTERY.

No. 1. 1742, Feb. 18. DICK of Grange *against* STEILL.

GRANGE having attacked Henry Steill, (with whom he had a depending process) and his son and four servants, and given him a box on the ear and beat off his hat and wig, on a dispute about some cartfuls of dung, which Steill resented no further than by holding Grange fast till he cooled; the Lords on a summary complaint of battery *pendente processu* assoilzied Grange because of his known circumstances, that he was little better than an idiot;—as for the same cause they refused the like complaint against him in summer 1741, where indeed there seemed to be something like a snare laid for them.

BENEFICIUM COMPETENTIÆ.

No. 1. 1734, Dec. 6. ANDERSON *against* GEDDES.

THE Lords seemed to think that by our law the *beneficium competentiæ* is competent, and remitted bill and answers to the Ordinary in the sale.