1772. HOUSTON and COMPANY *against* CLAUD and WALTER STEWARTS.

IT is now a fixed point, that *nova debita* do not fall under the Act 1696. This was so found *anno* 1772, in the case of Houston and Company against Claud and Walter Stewarts. The debt there was contracted, and the money advanced, upon interim personal security, and so continued for seven months; but it was proved by witnesses, that it had been agreed verbally at the time of lending, and a note, though not holograph, was produced to that purpose, that heritable security should be granted for the debt. Accordingly, this security was granted by Maxwell, for whose behoof the money was advanced, but on the eve of his bankruptcy, and infeftment taken. And though his creditors afterwards brought a reduction on the Act 1696, the Lords were of opinion that it was a *novum debitum*; and on that account the reasons of reduction were repelled.

1771. CREDITORS of JOHN NISBET of NORTHFIELD *against* CAIRNS.

THE same was found in the competition among the Creditors of John Nisbet of Northfield, determined *anno* 1771. In this case, Cairns having agreed to lend the money to Nisbet at the Martinmas, on heritable security, committed the execution of it to Hart, and gave him the money. Hart advanced the money piece-meal to Nisbet, on interim receipts; at last, 19th January, he took an heritable bond for the whole to Cairns, who was infeft 20th February. On the 21st February, Nisbet retired to the Sanctuary; and soon thereafter was rendered a notour bankrupt. The creditors having brought a reduction on the Act 1696, the Lords repelled the reasons, and assoilyied. It is observable, that, in this case, Cairns had no interim security. It was not therefore so strong a case as Houston's.

1777. *August* . JOHNSTON, &c. *against* WARDEN.

THERE have only been two decisions on that clause in the Act 1696, concerning the reduction of bonds, as granted for debts not contracted properly at the time. One is observed by Kames and Falconer, *Dempster* against *Kinloch*, *June* 1750; another occurred 15th July 1777, in the case *Warden* against *Johnston*, &c.

In this case, Warden, as cautioner for Law, in a tack of the parks of Innerleith, finding that Law was, or would be in arrear, obtained from him an heritable bond and infeftment for L.300, over certain houses in Edinburgh, (January 1772,) not for relief of his engagement, as he ought to have done, but as for money lent; and, in May thereafter, he paid up said arrear, amounting not only to said L. 300, but to L.73 more; for which last sum he also took another

heritable bond, as for money lent to that extent, (29th June 1772.) From this, it appeared, that, at the date of the first heritable bond in January 1772, Warden had not only not advanced or lent any money to Law, but that he did not do so for five months thereafter; and, even as to the second bond, it appeared that the narrative was false. It was true money had been advanced on the cautionry, but none had been lent; and further, as to both payments, it appeared, that, instead of taking a discharge of the rent to Law, he took only a discharge to himself and an assignation against Law. So that, if Warden had died, his representatives would have been entitled to have claimed on both debts; first on the heritable bond as for lent money, next on the above assignation for relief of the cautionry. In a reduction of both bonds, on the above mentioned clause of the statute 1696, the Lords reduced the bond for the L.300; but, as to the other bond for L.73, they assoilyied, (August 1777.)

As to the bond L.73, a false narrative is not sufficient to render a deed null; see Dict. *voce* Proof; and, as to taking double securities, there is no law against it: only one of them must be used, or, if both, only to one effect.

FRAUDULENT BANKRUPT.

1776. *February* . *against* JAMES and GEORGE KELTIE.

JAMES Keltie, wright in Nicolson Street, having failed in his circumstances, his effects were sequestrated in terms of the late statute, and William Gillespie, writer in Edinburgh, was appointed factor thereon. Gillespie, finding that Keltie did not comply with the terms of the statute, complained to the Court; who granted warrant for apprehending Keltie and bringing him before them for examination. He was examined accordingly; and, upon his examination and an inspection of his papers, sufficient ground of suspicion was discovered that he had entered into a fraudulent plan to defraud his creditors, in which he was assisted by his brother George Keltie. The Court therefore recommended to the King's Counsel, as interested for the public, to look into the proceedings, and to give their advice and assistance to bring those who were guilty to proper punishment.

They did so, and an application was made by the Solicitor General, as advocate depute, for having a proper punishment inflicted upon them. At advising this application, with the answers and writs produced, the Court pronounced the following interlocutors, (13th February 1776):—

"Find sufficient evidence that the said James Keltie is a fraudulent bankrupt, and that the said George Keltie has been partaker, art and part, with him in the plan of defrauding his creditors: Therefore ordain the said James Keltie to be carried from the bar back to the tolbooth of Edinburgh, and also ordain the said George Keltie to be imprisoned within the tolbooth of Edin-