No. 2. 1736, Feb. 6, 13. MARGARET HAMILTON *against* MR W. GRANT.

THE Lords (6th February) adhered to the Ordinary's interlocutor preferring Mr Grant, and found that his legacy being more special derogated from the legacy of Mr Justice Meldrum. The Lords adhered to their interlocutor of the 6th instant, but had no great regard to Lord Stair's opinion. It carried six to five.

No. 3. 1737, Feb. 2. CHARLES BURNET *against* MARY BURNET.

THE Lords adhered to the Ordinary's interlocutor, finding that this legacy was not conditional, but that the fee was vested in the children from the testator's death, only the payment may be delayed.

The Lords on the narrowest majority altered, and found that only the children of the brothers that shall exist after Mary Burnet's death have right to the legacy. They avoided *dedita opera* saying it was conditional, though it truly resolved into that point. The Bench consisted of 14, viz. 13 ordinary and the Marquis of Tweddale, the President being absent. I was in the chair, and there were for the interlocutor seven, and six were for adhering and so was I, but had no vote. 24th February, They adhered. I was in the chair, but did not put a vote.

No. 4. 1737, Feb. 18. DR CUNNINGHAM *against* LIVINGSTON.

THE Lords found that a legacy of household furniture and moveables, lying in such a particular house, or elsewhere, did not comprehend lying current coin, whether domestic or foreign, nor *nomina debitorum*, and therefore adhered to the Ordinary's interlocutor, refusing a bill of advocation on that ground.

No. 5. 1738, June 15. PHIN *against* GUTHRIE.

THIS petition makes the distinction betwixt legacies and *fidei-commissa*, very ingeniously, and I incline to be of the opinion of the petition, but as no answers were put in, because there was no more than would pay the particular legacies, I thought a point of that importance should not be unnecessarily determined *ex parte*, and therefore moved to remit it to the Ordinary, but the President was keen to have it determined, and the Lords found Guthrie the executor liable to hold count in the terms of his oath.

No. 6. 1738, Nov. 19. CREDITORS of DOUGLAS of Glenbervie.

See Note of No. 8. *voce* ALIMENT.

No. 7. 1740, June 13, Nov. 11. CAMPBELL, &c. *against* CAMPBELL.

THE Lords first found that the substitution in case of Provost Campbell's decease to Margaret Campbell does still subsist, notwithstanding the Provost survived his son the testator, for they thought the Roman law with respect to the *vulgaris substitutio* does not hold with us. The President and Murkle were of a different opinion; and they found

that substitution was not altered by the general disposition by Provost Campbell five years before the testament. Arniston also differed; yet 11th November they adhered. *Vide* 13th July 1681, Christie, (DICT. No. 30. p. 8197.)

No. 8. 1741, Feb. 17. HAY *against* CUTHBERT of Castlehill.

FIND the heir not *passive* liable, (for they thought it indeed only a legacy,) but found that the defender, the heir, having taken up the subjects in the second deed 1732, he must account for and apply the surplus of the subjects, if any be, after paying debts, for payment of the children's provisions.

No. 9. 1741, June 4. PATERSON AND MILLER *against* PATERSON.

A MAN by a testamentary deed having made a trust-deed for the use of certain legatees, and obliged the trustees to pay to the legatees after-mentioned, their heirs executors and assignees, the sums of money after specified, and then names the legatees and sums, and among the rest Charles Paterson 1000 merks without adding the heirs executors or assignees to any of them; this Charles died before the testator, and the Lords found that the legacy fell by his death by a majority; 2dly, they found no place for *jus accrescendi;* 3dly, that the wife's share of the household plenishing, so far as they were extent at the husband's death must abate from the legacy of household plenishing.

No. 10. 1742, Feb. 12. PRESBYTERY OF KIRKCUDBRIGHT *against* BLAIR.

THOUGH a special legacy or an assignation of sums of money, that is revokable, is effectually revoked by uplifting the money assigned, yet a design to uplift it though ever so clear by giving orders to a writer to intimate to the debtor to pay and apply the money when paid to certain other uses, and lodging the bonds in his hands, the party dying before the money is paid, or any express revocation in writing, the special assignation subsists, 18th December 1740.—27th November 1741, Before answer grant diligence as prayed for, *renit.* President, Justice-Clerk, *et me.*

This case is stated before, 18th December 1740, and we had two questions, 1st, Whether the calling for the money from the debtors is itself a revocation? and 2dly, If it is, whether we could allow the pursuer to prove by witnesses that he did it not *animo* to revoke the mortification? 1st, We found the witnesses could not be admitted; 2dly, We altered the former interlocutor, and found sufficient evidence to operate a revocation of the mortification.—N. B. This very morning in the case of Hugh Ross of Holm against his father's widow, a bond taken by the father to his wife in liferent which was revokable, and the father having charged with horning actually got payment of a part, we unanimously found that this was no revocation in so far as the money was not uplifted. I did not hear how they all voted, but the President and I differed as to this last from the interlocutor.—12th February 1742.

No. 11. 1742, July 27. LAUDER of Winepark *against* JACK.

A BILL of L.40 sterling being legated, the testator thereafter obtained payment, but some days thereafter, as was said, put the money in his landlady's hands to be applied as