considering that had been only done some time before, the messenger was at least *in bona fide* to suppose that he still lived in the father's house.—*Dissent. Preside et Drummore. 3tio,* With respect to the execution against the same Grim, the defenders adduce the evidence of the two only servants who were at that time in Grim the father's house, who both depose that they got no copy from the messenger, and that he was but once in the house for a year before, and then he was alone. This evidence was the stronger, as the messenger and witnesses, in the explanatory execution, (of which we made mention January 28, 1741,) had condescended upon these two persons as those to whom they gave the copies. Neither was the execution in this particular, supported by the oaths of the witnesses taken by the pursuers as approbatory of the execution; for one of them depones that he was positive the copy was given to Margaret Forsyth, (one of the servants;) the other thinks it was rather given to a woman who was not at that time servant in the house.

But this likewise the Lords repelled, in respect that the presumption of law is for the truth of the execution, which cannot be taken away by a negative evidence, or mere *non memini*, especially, where there is no evidence of fraud or deceit intended.

1741. *June* 12. REDHOUSE *against* BAILIE of the ABBEY.

[Elch., No. 2, *Abbey;* C. Home, No. 171.]

IN this debate, likewise, a question was thrown out, Whether money could be poinded in a debtor's pocket?

The President and Elchies gave their opinion that it could.

It was also questioned, Whether debts contracted in the Abbey were privileged, so that personal diligence might be done for them, even against persons in the sanctuary. The President thought that they were.

1741. *June* 12. SIR JOHN ARNOT *against* ———.

THIS was a question about the nomination of a bellman, betwixt a burgh of barony and the baron. The bell was allowed to be the property of the burghers, purchased at their joint expense, and was employed by them as a passing bell, to intimate deaths, and summon people to funerals. This they said was a co-partnership, a company trade, which had nothing illegal in it, and with which the baron had nothing to do.

The Lords found, That the nomination of the bellman belonged to the baron,

as a thing of a public nature, which regarded the policy and administration of the burgh.

1741. *June* 12. CREDITORS of ROSEBERRY *against* ———.

LORD Roseberry disponed his estate to certain trustees for the payment of his debts; and this disposition, and the assignation therein contained, was intimated to all the tenants and possessors of the lands. This trust-disposition was afterwards reduced at the instance of some creditors who had not acceded to it. But, before that, a tenant of Lord Roseberry's, who was likewise a merchant, had made considerable furnishings to my Lord; and now, when the trust-disposition was reduced, and declared to have been null from the beginning, he contended that the rents belonged to my Lord, even after the disposition; and that he was at liberty to retain his rent in his own hand, and apply it to the payment of what my Lord owed him.

The Lords found, That the reduction, being obtained at the instance of creditors, could not operate against them; and therefore, that the rent in question was to be applied to their payment.

1741. *June* 12. MOODIE *against* SIR JAMES STUART.

THE question here was about the quantity of an assythement, whether it contained only the expenses laid out by the relations of the defunct in the prosecution of his death, together with an aliment to those of his relations who stood in need of being alimented, and whom the defunct would have been obliged to aliment; or whether it did not likewise contain something *in solatium* to the relations for the loss they had sustained. This last the Lords found.

1741. *June* 12. SPOTSWOOD *against* ———.

[Kilk., No. 6, *Writ.*]

THE Lords found, That a marginal note subscribed by the parties, but not attested by the witnesses or writer, was good and valid, being in favour of the granter of the writ, and against the custodier of it; so that there could be no suspicion of its having been unduly adjected, unless it could be proven, that, one way or other, the writ had fallen into the hands of the granter.