

doubt. The President said that he was for having the petition answered till he considered the act of sederunt 1662, but none thought the interlocutor right.

No. 11. 1743, Nov. 2. ARMSTRONG *against* SIR D. CAMPBELL.

AN executor having letters of administration in Ireland here, was ordained to confirm before extract.—N. B. The pursuer did not oppose.

No. 12. 1743, Nov. 22. ANDERSON *against* ANDERSONS.

THE question was, Whether a discharge by a son to his father, his heirs, executors, and successors, of certain intromissions with effects of the sons, and of his bairns part of gear, and of all he could claim of or from him and his foresaids by and through his decease, or for any other cause or occasion whatsoever, did exclude the son from succeeding in the dead's part? The Commissaries found that it did exclude him. But upon Arniston's report we found it did not, as we found in a like case 30th June 1741, Pringle *against* Pringle.

No. 13. 1744, Jan. 3, 13. CREDITORS of MR MURRAY, *Competing*.

THE Lords unanimously found that the lodging the money in Chalmers's hands did not put it out of Mr Murray's power, and that it remained *in bonis* of Mr Murray, but found sufficient evidence that the bill of L.288 was of the proceeds of Sir James Rothead's executry, and therefore found the creditors and nearest of kin of Sir James Rothead preferable to the creditors of Murray the executor; and adhered to the interlocutor as to Gordon's bill of L.120 sterling, allowing him retention; and as to the question with Miss Murray as to the household furniture, there the chief question was anent Miss Murray's right of redeeming the household furniture, whether the creditors can take the benefit of it. The point anent the L.288 bill Arniston said never was pleaded, and gave his opinion for the alteration, and 13th January Adhered as to the L.288. I was in the Outer-House.

No. 14. 1744, Feb. 10. LORD NAPIER, &c. *against* HAMILTON, &c.

THE Lords found that the cautioners ought to have credit for debts paid by Mr Thomas Menzies before confirmation, notwithstanding he had intromitted with other moveables of the defenders without title, and that the creditors were not bound to instruct these intromissions exhausted.

No. 15. 1744, Nov. 27. CREDITORS of MURRAY *against* HIS RELICT.

MARQUIS ANNANDALE being debtor by an open account to Hugh Sommerville, his Commissioners gave a precept on his factor to pay the money to Mr Geddes and Mr Murray, they giving their discharge. Mr Murray had confirmed his wife executrix to her father, but did not give up this and his own agent-accounts, and Mr Murray died before the money was paid. His relict and Mrs Geddes afterwards eiked this to the testament, and compete

with Mr Hugh Murray's, her husband's, creditors. Arniston, President, Dun, and I, and even the            was of opinion for the husband's creditors, and all that spoke except Lord Tinwald. However, the procurators for the Lady moved for a hearing. We ordered one for Friday;—and after full hearing we found that the whole deads part of executry was established in the nearest of kin by confirmation, so as to transmit to their assignee voluntary or legal, notwithstanding that sundry particulars had been therein omitted. 1st December. *Con.* were Haining, Strichen, Kilkerran, Tinwald.—23d January 1745 Adhered, *renit.* Kilkerran and Tinwald.

No. 16. 1744, Dec. 18. BLAIR *against* DUN.

My opinion here was founded on a point not at all mentioned in the papers, viz. Whether an executor nominate is liable further than he actually confirms or intromits with, though he knew of the other debts?—and it carried pretty unanimously that he was not liable either to creditors or nearest of kin;—and found that a depending process of count and reckoning for that executry was no sufficient ground of compensation or retention of any liquid debts due by Blair the executor to Dun.

No. 17. 1745, July 30. CUNNINGHAM'S CREDITORS *against* GAINER.

MARY GAINER and her daughter were decerned executors upon a general assignation, which the creditors opposed, but the Commissary preferred her;—and now the question is, Whether the plate should be roup'd to the highest bidder, or if she be allowed to keep them at the appraised value? The Commissary ordered them to be roup'd. She raised advocacy, and Tinwald remitted with instructions not to roup;—and the Lords Adhered, *renit.* President, Dun, *et me.*

No. 18. 1744, Dec. 21. M'DOUALL *against* HIS FATHER'S CREDITORS.

THE Lords found, that such debts as he was cautioner in for his father, whether the debts were paid by him before or after confirmation, he might pay himself, and therefore altered the Ordinary's interlocutor. 2dly, Also as to debts paid by him before confirmation, wherein he was not cautioner, he might pay himself;—and therefore altered the Ordinary's interlocutor also as to that point, which preferred him only *pari passu* with the other creditors.

No. 19. 1745, July 9. BIGGAR *against* HELEN BEE.

WE first found unanimously, at least *nem. con.* that the daughter having survived her mother and possessed, the *corpora* ought to be confirmed as *in bonis* of her in name of her executors. The second question was as to accounts and book-debts arising from the brewery, carriage of coals, &c. if they ought to be divided betwixt the mother and daughter, that is, the daughter's executors and mother's nearest of kin in proportion to their legal interest in the effects of John Wallace, if he left any free, (which was Arniston and Tinwald's opinion) or if the whole belonged to the daughter, who alone had right to the tack;—and it was carried that these accounts belonged to the daughter. *Con.* were Strichen,