No. 11. 1751, Jan. 26. LYON *against* GRAY.

IN 1739 M'Cunn a merchant going to the West Indies, settled his affairs by a deed *inter vivos*, disponing all debts and effects, heritable or moveable then pertaining or that should pertain to him at his death, to John Lyon and John Gray equally betwixt them their heirs executors or assignees, with the burden of his funeral charges and certain debts and dispensing with the not-delivery and reserving power to alter; and in the end he names them his sole executors and universal legatars. Some time after John Gray died leaving a son, James Gray suspender, and in 1742 M'Cunn returned from the West Indies, and gave a commission to John Lyon and James Gray to gather in his effects and sell his lands, and he himself uplifted most of the particular debts mentioned in the deed 1739. The lands were purchased by a trustee for the behoof of John Lyon and James Gray, and on M'Cunn's death Lyon the only surviving creditor confirmed the price as *in bonis* of M'Cunn, and charged James Gray for his half of it, who suspended; and the question was, Whether John Gray's interest ceased by his predecease in the same way as in the case of an executor or legatar, or if it devolved to his son the suspender as his heir, the disposition being to them their heirs executors or assignees? Lord Dun found for the suspender notwithstanding John's predecease, and on reclaiming bill and answers the Lords yesterday adhered. (I was in the Outer-House.)

No. 12. 1752, Jan. 10. J. SIMPSON *against* ROBERT BARCLAY, &c.

A TAILZIE containing a power of revocation *etiam in articulo mortis* was found effectually revoked by a latter will and testament executed by the maker of the entail at Buenos Ayres, though they found that that testament was not sufficient to convey the estate to the legatee. But a declaration having been by him subjoined to the will showing his *enixa voluntas* that his sister the legatee and her heirs should enjoy his estate, and therefore requesting that the above disposition (meaning the will) might take effect, having no lawyer to advise him better; the Lords found this writing sufficient to bind the heir and a sufficient title for an action to denude,—but by the narrowest majority, viz. four besides Milton in the chair, three against it and three *non liquet, inter quos ego*, 10th December 1751.—10th January 1752, The Lords adhered, *me renit.* in the chair,—the Court equally divided and one *non liquet.*

THIRLAGE.

No. 1. 1744, July 17. FEUARS OF FALKIRK *against* THE MILLER.

THE Lords first found the Feuars thirled only *quoad grana crescentia*, and not *invecta et illata*; and 2dly, they ordered the steel mills to be removed in ten days, or otherwise destroyed. In this last, three or four of us, whereof I was one, did not vote, 19th July