him; and some others were of the same opinion; but of that I own I doubted; and we did not determine it. We also unanimously found, that by this bond there was no *jus quæsitum* to the children, but that the father might if he pleased give it up.

No. 14. 1739, Dec. 21. CAPTAIN, &c. CAMPBELL *against* ELIZABETH CAMPBELL.

See Note of No. 2, *voce* ARBITRIUM BONI VIRI.

No. 15. 1739, Dec. 14. ALISON PRINGLE *against* THOMAS PRINGLE.

THE Lords found that Thomas Pringle, the son, having succeeded by disposition to his father, in lands exceeding his share of the provision in the contract of marriage, that his said share is thereby satisfied and extinct; for they most justly considered this obligement not as a debt to be paid first out of the executory, and then the heritage, but as a settlement by the father of his succession, whereby the father was bound to the respective children, that their succession should amount to the sum contracted, and that the father fully implemented it by letting the succession devolve to them severally (though no disposition had been made by him) to the extent of their shares of that sum. 8th February 1740, The Lords adhered.

No. 16. 1740, June 11. JOHNSTON, &c. *against* JOHNSTON, LADY LOGAN.

THE Lords, in consideration of the circumstances of the case, and particularly the cause expressed in the first bond of corroboration, for the brother renouncing the clause of return in his father's bond of provision, which was, that failing children of Mary-Anne, the 8000 merks should return, and instead of that clause making the clause to return in case of her dying before marriage, and in the same deed granting an additional provision for 7000 merks, payable indeed at the first term after Mary-Anne's marriage, but to return in case of her death without children lawfully procreate of her body, and existing at the time of her death;—the Lords were of opinion that the granter had this event in his view, and as his sister had a sufficient portion, the 8000 merks for a marriage settlement, his meaning was, that she should not disappoint the clause of return by assigning even in her contract of marriage, and therefore found the clause of return still effectual notwithstanding the said contract; and the said Mary-Anne having already assigned the money, found the assignee, Captain Napier, obliged, upon payment, to find caution to repeat, in case the condition of the return shall exist. This was unanimous.

No. 17. 1740, Nov. 6. JACK *against* HOOD.

THE Lords (6th November 1739) found the father's obligement to the son in the contract of marriage is void by the dissolution of the marriage within year and day without issue, and that the son's assignment conveyed no more than the debt, such as it was. *Renit.* President, Royston, Minto, Murkle, Arniston.

The Lords, (6th November 1740) altered the interlocutor of 6th November last, and found that no part of the obligation by the father to the son for 2000 merks being provided to the issue of the marriage, the obligation does not resolve by the dissolution of the marriage within year and day. *Pro* were Royston, Milton, Minto, Arniston, Murkle. *Con.* were Drummore, Kilkerran, Dun, Balmerino, *et ego*,—and so it carried by the President's casting vote. 9th June 1742, The Lords Adhered.

No. 19. 1742, Feb. 8. ROBERTSON *against* MRS JEAN KERR.

See Note of No. 6, *voce* LEGITIM.

No. 20. 1743, June 4, 8. HEIRS of STEWART of Phisgil, *Competing*.

JUSTICE-CLERK seemed to think the exclusion of Agnes Stewart in the tailzie 1719 had no effect by the law of Scotland; but all the rest that spoke, particularly Arniston, thought that where there was a destination of succession to heir-male or heir-of-line with an exclusion of a particular person, that was a virtual institution of the next. Arniston observed in this case, that as to the wife's estate, there was no obligation upon the husband, but a conveyance and destination by the wife, by which the husband was made fiar; and the question was, Whether he had powers to alter the destination?—that he could not alter so as to prefer strangers, and doubted much whether he could even prefer the heirs-male of the marriage to the heirs-of-line. Kilkerran thought that *quoad* the conquest he had power;—but without putting a question, we found that Phisgil could not prefer his own daughters to his son's daughters, and therefore reduced, 4th January 1743.—8th June, The Lords *nem. con.* adhered, but with a further addition of finding the entail inconsistent with and *in fraudum tabularum*; which we did at the pursuer's motion.

No. 21. 1744, Jan. 13, 31. MISS MURRAY and CREDITORS OF MR MURRAY.

See Note of No. 13, *voce* EXECUTOR.

No. 22. 1744, Dec. 11. CREDITORS OF MR MURRAY *against* GRAHAM.

See Note of No. 6, *voce* LOCUS PŒNITENTIÆ.

No. 23. 1745, Feb. 19. MRS FRANCES KERR *against* JOHN YOUNG.

See Note of No. 14, *voce* LEGACY.

No. 24. 1747, June 30. BEATSON of Killrie *against* MARGARET BEATSON, &c.

A BOND of provision by a brother to his sister, payable at her marriage, *proviso* that if she should have no children, the fee of the principal sum shall fall, accresce, and pertain to the granter and his heirs; and she having assigned the bond to her husband in consideration of the settlements by him on her; both of them charged the brother, who