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 rouped to the highest bidder, or if she be allowed to keep them at the apprised value ? The Commissary ordered them to be rouped. She raised advocation, 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,

Arniston, and Tinwald: All the rest for it,—only Leven and Kilkerran absent. The next question put, was upon bonds and bills in the mother Christian Ramsay's name, and which did not appear *ex facie* to be the proceeds of the farm, brewery, &c. unless the mother's nearest of kin bring evidence that they arose from other funds;—and it carried "presumed." *Con.* were Strichen, Arniston, Murkle, and Tinwald;—and we remitted to the Commissaries to proceed accordingly;—and 19th June and 9th July adhered as to the two first, but remitted the third as to bonds and bills having no relation to brewing or coal driving;—remitted to the Commissaries to hear parties upon the presumption or evidence on either side.

No. 20. 1751, Feb. 20. SPENCE *against* CREDITORS of ALCORN.

SPENCE's wife being decerned executrix to her grandfather, made over the debts to herself and husband, and they sued Alcorn in the inferior Court, and he having corroborated his former bonds in their name, they after raising inhibition on the depending process produced the corroboration in that process and obtained decreet, there being no opposition, which they extracted without confirming,—and thereon adjudged.—Then in a competition of Alcorn's creditors they were preferred on their inhibition. But the wife afterwards dying, the creditors objected, not only that all the diligences were inept, but also that Spence the husband had no right to the debt, because his wife had not confirmed,—and Minto found the diligence void and null. But on a reclaiming petition and answers, I observed that though the interlocutor was agreeable to our ancient practice, yet the act 1690 discharging charges to confirm, and our practice since, has made a great alteration. That now by our judgment in the case of M'Whirter and several others, possession by their nearest of kin without confirmation vests the property in them. That the case of *nomina debitorum* was not then determined, because it might be of bad consequence to make the naked possession of a bond transfer the right. But I had no doubt, and believed it had been so found, that a nearest of kin could effectually receive payment and discharge a bond without confirmation, which after his death could not be quarelled by the next successor,—and if he could receive payment and discharge, I saw no reason why he might not take the debtor's obligement in his own name;—and if in this case Spence's wife might have discharged the old bonds, and taken a new bond in her own name, I could see no reason why a bond of corroboration should not be equally effectual to her and her assignees. The President was clear of the same opinion, and argued strong,—and in the end we altered the interlocutor almost unanimously, and found that the diligences are not void, that the petitioner has sufficient right to the debt, and therefore preferred him. There came in a reclaiming petition in June, but 4th June we refused to receive it, because after the reclaiming days.

No. 21. (1752) 1753, July 23. SIR A. GRANT *against* MRS BURROWS, &c.

CAPTAIN WILLIAM BURROWS, deceased, and Sir Archibald Grant had many great dealings together, and in September 1733 settled accounts together, whereby the balance in Burrows's favour was L.3800 sterling; but as Sir Archibald disputed sundry articles of the accounts, Burrows accepted in satisfaction an heritable bond by Sir Archibald on his lands in Scotland for L.2000 sterling,—and subjoined to the account there is a mutual