price? and, by a majority, we found not. President and Arniston found great fault with the first interlocutor, and that this right of pre-emption was not affectable by creditors, and the son's right of consequence not reducible by them: 2dly, That we could not take the discharge out of the son's pocket, nor consequently out of his agent's, and deliver it. This was on the 15th, and the creditors having reclaimed, and offered to prove that the son was under back-bond to the father, which clearly made at least this money the father's, and craved diligence to recover it, and upon recovery to alter the former interlocutor; yet we refused their bill upon the second reason, *me quidem inter alios renit.* I had indeed some doubt as to the filling up the blanks; but since that was ordered by the Ordinary, and acquiesced in without reclaiming, I thought we could order delivery; and I also thought the first interlocutor right, though there had been no back-bond.

No. 18. 1744, Dec. 20. ROBERTSON *against* YOUNG.

A BOND signed by a woman who could not write, but her hand led, unanimously found void and null.

No. 19. 1745, June 17. BIRREL *against* MOFFAT.

A DISPOSITION signed with initial letters, and also by two notaries and four witnesses, sustained, albeit the first notary's attestation did not bear *de mandato*, in respect that the body of the deed, which was all written by that notary, expressly mentioned the notary's signing at the party's command, 19th February 1744. But on a reclaiming bill this was altered, and the disposition found null, 18th June 1744, *quod vide.* (*infra.*)

A disposition by a man to his wife, signed by notaries, found null, in respect the first notary's attestation bare not *de mandato*, albeit the whole paper was written by a notary, and the doquet bore that it was signed by notaries for him, at his command, because he could not write, and was also signed by initials; but that was not mentioned in the doquet, but only that he signed by notaries, 18th June 1745. I was in the Outer-House.

No. 20. 1745, July 30. ANDREW TRAIL *against* CHRISTIE.

THESE parties were before us formerly, in July 1743, upon a question on the stamp act. (No. 15.) The question now was, Whether a general discharge of all bills could be taken off by a proof by witnesses that this bill of L.160 was not intended to be included? which the Ordinary found it could not. The President and I were very clear it could not; but Tinwald and Kilkerran being strongly impressed with the proof that the Ordinary had taken before answer, were for making an exception of this case from the rule. But after long reasoning, we all agreed to take the suspender Andrew Trail's examination in presence (23d July); and after examining him, the 30th, we adhered.—30th July, A discharge being granted of two bills that had been lost, and of all bills or bonds that ever had been granted preceding the date of the discharge, and which discharge was written by the granter himself, the granter offered to prove by witnesses that a bill of L.160 Scots, which was payable some little time before the date of that discharge, (and which the debtor averred he had actually paid, and in particular, that he had paid a balance of

it at granting the discharge), was not meant to be included in that discharge, and mentioned some circumstances that raised in us a strong suspicion that it was not intended to be comprehended; yet we could not allow a proof by witnesses to redargue an express writing.

No. 21. 1748, Feb. 11. WILLIAM TAYLOR *against* LORD BRACO.

IN the case mentioned 26th November 1747, (No. 17, *voce* FRAUD), betwixt these parties, Lord Braco objected to William Taylor's bond, which was by Andrew Geddes, younger of as principal, and Archibald his father as cautioner, yet the testing clause run thus, "In witness whereof I have written and subscribed these presents, at" &c.; which bond, if it was Andrew the principal, then Archibald the father, who sold the lands, was not bound; and if it was Archibald the father, then it was null as to both, because not signed by the principal debtor. But upon answers, the Lords repelled the objection, agreeably to two precedents in point, 14th February 1712, Orr against Wallace, (DICT. No. 153, p. 16919), and 15th January 1734, Gilmour against Representatives of Pollock.

*** Relative to the case of Gilmour, the note in the manuscript, at the date 15th January 1734, is as follows:—The Lords adhered to the Ordinary's interlocutor. The former decision (alluding to Orr against Wallace) was the *ratio decidendi* that moved the Lords.

No. 23. 1749, June 2. BARBARA ANGUS *against* DR COLT.

See Note of No. 18, *voce* CAUTIONER.

No. 24. 1749, June 2. SINCLAIR *against* JAMES CADDEL, Upholsterer.

CADDEL hired Sinclair as a journeyman for three years, by a writing, not stamped paper, and the writer not designed. He entered to the service and continued 15 months, and then left him. Caddel sued him in the Bailie-Court, who ordained him to make out his service, and granted warrant to incarcerate him till he found caution for that effect. He suspended, and objected, 1st, That the contract was unlawful, being *species servitutis*; 2dly, Not stamped paper, as an indenture of apprentices ought to be, nor as all contracts must be; 3dly, The writing null, because no writer. But Murkle found the letters orderly proceeded, and gave expences. Sinclair reclaimed, and we had no regard to the first, nor did we look on him as an apprentice; but found some difficulty as to the other two; and on the whole, found that having begun the second year's service, he must complete that year, and adhered as to expences; but suspended as to the third year.

No. 25. 1749, July 22. PICKEN *against* JANET CROSBIE.

THE deceased Picken disponed an adjudication he had for L.500 Scots to his wife in liferent, and two daughters in fee. His son obtained a reduction in absence of this disposition, and they pursued a reduction of that decreet. A proof before answer was allowed, and the pursuer proved sufficiently that the defunct could not write, if it was not sometimes by initial letters. But on the other hand, there was a clear proof by instru-