No. 7. 1738, Dec. 19. CREDITORS OF NEWLAW, *Competing.*

THE Lords resolved to lay aside all the objections of *res judicata* on either side, and first found that Charles Murray the son might adjudge, being *nominatim* substitute in the bond of corroboration, without serving heir to his father in that bond. Some of us *inter quos ego* doubted, because if the father had taken infeftment, we agreed that a service would have been necessary, and I could not see that the taking or not taking a sasine could alter the point of law, Whether it was necessary to make up a title or not? *Vide* Dirleton's Doubts and Stuart's Answers *De Feod. pœcun.* &c. Ques. 9th. January 6, The Lords remitted a reclaiming bill to the Ordinary to the end that the whole cause might be entire.

No. 8. 1739, Jan. 9. YORK-BUILDINGS CREDITORS, viz. DUKE OF NORFOLK, &c. *against* SIR WILLIAM BILLERS.

See Note of No. 21, *voce* ADJUDICATION. The case referred to, (Duke of Norfolk, &c. against Annualrents,) is mentioned 14th November 1739, thus:

Found that the trustees must take a day to produce the whole annuity bonds granted whether to the persons called or not, as they did 9th January last, but upon a proposal made from the Bar, they remitted to the Ordinary to hear them on that proposal.

No. 9. 1741, July 8. LAING *against* NICCOL.

See Note of No. 4, *voce* ASSIGNATION.

No. 10. 1742, Feb. 20. GORDON of Pitlurg *against* GORDON of Tichmurie.

See Note of No. 7, *voce* PASSIVE TITLE.

No. 11. 1742, June 17. CREDITORS OF MR MURRAY, *Competing.*

MR CHALMERS being decerned executor in the Commissary Court of St Andrews, within which Mr Murray's dwelling-house lies, and where he kept a farm and labouring servants, and resided there in time of vacance, but had a house in town where he resided in time of Session; and then Mr Blair having served an edict to be served here, Mr Chalmers opposed it; and the question was which Commissary should be preferred? The Commissary of St Andrews was preferred, and the edict before the Commissaries of Edinburgh advocated and remitted to that of St Andrews, as we found formerly in the case of Lord Kimmergham's Creditors, 8th June.—17th June, Refused a reclaiming bill without answers.

No. 12. 1749, June 28. GRIM *against* JOHN AND DAVID SCOTT.

IN 1711 Scott of Hedderwick granted bond for love and service for L.1000 to Jean Ogilvie wife of David Grim and the children of that marriage, whom failing the children

of any other marriage, excluding all her other executors or assignees, payable at Martinmas 1712, but secluding all diligence for payment or security of it during the granter's life, but prejudice to him to pay the whole or any part he should think proper;—and in case of the wife's death without children then existing, declaring the bond as to what should not then be paid, to be void and null, and excluding the husband's administration, because it was alimentary for the wife and childrens support and subsistence. The wife died in 1713, leaving one daughter, who died in 1716, without making any title to the bond. Hedderwick died only in 1735, and no demand made on the bond till 1748, when David Grim was served heir and decerned executor to his daughter, and sued Hedderwick's heirs for payment. The defence was that the bond was gratuitous and alimentary, not exigible during the granter's life, and all executors and assignees other than the children of Jean Ogilvie excluded, and therefore Jean Ogilvie and her child having both failed long before Hedderwick the bond became extinct. 2dly, That the daughter had made no title to the bond, and therefore the pursuer had no right as heir or executor to her. Answered: The bond could only become void in one event, Jean Ogilvie's dying without children. To the second, That the children of that mariage were not substitute to their mother but *re et verbis conjuncti* with her, *et concursu tantum partes fecerunt.* The Lords on my report first found that the bond subsisted notwithstanding the predecease of both mother and daughter before Hedderwick. This found by the narrowest majority six to six, the President being one of the six against the interlocutor and so not counted. Next they found that the daughter had right to the bond without any title. This was found by a pretty great majority, though Kilkerran who was for the first interlocutor was against this, at least would not vote. So that if a vote had been put on the whole case the defenders must have carried it. But I own I was against both. I cannot understand the *re conjuncti.* While the children lived with the mother they would no doubt be alimented as she was, but suppose them married or out of the family in her time, they could take none of the money from her during her life.

No. 13. 1752, Nov. 17. M'LACHLAN *against* CAMPBELL of Skirvane.

IN a competition between these parties for the salmon fishing in the water of Add, upon mutual declarators, Skirvane produced a disposition in 1717 of the lands, *inter alia,* of Dunadd, with the salmon fishing and other fishings on the water of Add, by Lachlan M'Lachlan of that ilk, which was admitted to be intended of the superiority of the lands, which had been before feued, and the feu-rights expressly excepted, with infeftment on the disposition. Dunadd again produced a precept of *clare constat* to one of his predecessors by Lachlan M'Lachlan of that ilk (I suppose the same person) of these lands, and *per expressum* of the salmon fishing, but produced no charter nor ancient right nor no sasine on that charter, which were said all to be lost. In the Outer-House an act was pronounced for both parties to prove possession, and for Dunadd to produce his other rights. He proved possession to preserve his right, but as he produced no one infeftment we preferred Skirvane, 3d July last. But Dunadd reclaimed and produced further the extract of the sasine 1696 on the precept of *clare constat.* His petition with answers coming this day to be advised, the President was of opinion, that however the precept of *clare* and