

debt; 2dly, By an heir of a strict entail pursuant to a faculty to give bairns provisions to a limited extent; 3dly, The general clause can only mean claims of the same kind with those mentioned, viz. portion natural, &c. Third defence, Supposing the father liable as tutor of law, yet the action against him prescribed in ten years after the daughter's majority. Answered, That prescription only competent to such tutors as are bound to make inventories. 2dly, The father liable *super alio modo* as upgiver of the testament. The Lords thought there was some difficulty in the first and third defences, and therefore did not decide thereon, but unanimously sustained the second and assolizied.—(29th November 1751.)

No. 21. 1752, Jan. 7. COPLAND *against* IRVINE.

IN the competition of the creditors of John Rae, an adjudication against him on a bond, wherein he was bound only as cautioner, though led 20 years after the date of the bond, was sustained for all that fell due in seven years after the date of the bond, in respect of a horning executed against him within the seven years, though never denounced or otherwise followed out, and Kilkerran's interlocutor adhered to *nem. con.*

No. 22. 1752, June 4. CAMPBELL *against* M'LACHLAN.

CAMPBELL threatening to detain the stocking and effects of one of his tenants that was removing, for arrears of rent and other debts, M'Lauchlan, a friend of the tenant's wrote to Campbell, and engaged himself for the tenant for whatever they should agree, and thereupon Campbell let the tenant's goods go. In a process against M'Lauchlan, wherein a proof before answer was brought by witnesses, that he subscribed the letter, because it was not holograph and he denied that that was the letter he subscribed, though he owned the signing a letter written by the same person engaging for the arrears of rent, but not for the other debts,—we found that mean of proof competent, because we considered it as a bargain for moveables which is proveable by witnesses.—*Sed renit.* Kilkerran, Kames, *et aliis*;—and we repelled the objection that the tenant had come to no agreement with his creditor, for that we considered as only meaning the settling of what was justly due, which was *pars judicis*; but in this the President alone was against the interlocutor.

No. 23. 1753, Jan. 17. ELIZABETH M'KENZIE *against* M'KENZIE.

MARTIN and Blackhill were debtors in a bond of L.100 sterling, and sometime after a bond of corroboration was granted by them two and Sir George M'Kenzie of Granville, and he got the debt to pay, and took assignation;—and now his relict, in his right, sues relief against Blackhill, who produced a bond of relief by Martin of the original bond, and insisted on being liable in relief only *pro rata* agreeably to the decisions of Maxwell of Orchardton and Murray of Broughton, and George Lockhart against Lord Semple. Answered, In these cases the new obligant acceded plainly on the faith of the principal debtor. In the first case, Sir Godfrey M'Culloch alone was bound with Murray of Broughton in the corroboration; and in the other Mr Lockhart was alone bound in the