

Lords were of the opinion of the above interlocutor. I likewise doubted whether the parties intended any more than to reserve to the father a power to provide his sons *ad libitum*, but I own the last part of the clause is very strongly expressed, and the Lords could not find any way of extricating it so as to answer the parts of the clause, and make it consistent with law, other than by the above decision.

FORUM COMPETENS.

No. 1. 1735, July 11. RAMSAY *against* THOMSON.

THE Lords found the action here competent, notwithstanding of his having obtained sentence in the Justice-Court, as had been found 13th December 1672, Murray *against* French, (DICT. No. 10. p. 2917;) but found the nullity of the bill competent to the defender, but remitted to the Ordinary to hear how far the debt can be astructed even against this defender.

No. 2. 1736, Feb. 17, 21. LEGGAT *against* DUNCAN.

THE Lords found the decret null as *a non suo domino*, and repelled the answer of *communis error*, in respect of the reply that such error could not make the defender contumacious; and here there was no instruction of the debt, other than the decret in absence holding the defender as confessed, upon which no diligence followed against the defender, who lived many years after.—21st, The Lords refused a bill without answers, and adhered.

No. 3. 1737, June 29. TRAN and HIS CREDITORS *against* WEIR.

THE question being, Whether the Commissaries of Glasgow or Hamilton were the proper Court for confirming Tran's testament? the creditors had applied to the Commissary Court of Glasgow, upon which the Commissary of Hamilton gave out an inhibition to the Commissary to proceed; and upon his contempt they presented a bill of advocacy; and the first question was, Whether, since the late act of Parliament against forcing parties to confirm, it be competent to the Commissary of Glasgow to hinder the creditors or their principal to confirm where they please? and the Lords found it not competent.

No. 4. 1752, Feb. 20. FITZGERALD and EGAR *against* BONTEIN.

IN February 1740-1 Fitzgerald Egar and others had a ship and cargo seized in Jamaica by the naval officer and condemned by a Court of Admiralty, one-third to the King's use, one-third to the Governor, and one-third to the seizure maker, and sold; but this condemnation was reversed on an appeal to the King in Council, who ordered a new trial of the cargo, but the ship or value thereof to be restored, "whereof the Governor or Com-

mander in Chief in Jamaica for the time being and all others concerned are to take notice and govern themselves accordingly." Bontein the naval officer came to Scotland, and the owners sued him here for the capture of the ship, libelling L.3000 damages, and on a summary warrant put him in prison till caution *judicio sisti et judicatum solvi*. There he remained till the process was finished; when the Judge-Admiral found, from the circumstances of the case, that the naval officer acted *bona fide* and agreeably to the duty of his office, and that by the decret he was not liable in any damages, and that the said decret could only receive execution as to restitution of the ship or value in Jamaica. Of this sentence the pursuer presented a bill of suspension, which was refused 2d December 1749, when I was in the Outer-House, and therefore knew not, nor could the rest of the Lords remember, whether it was on the merits of the cause or incompetency. After that bill was refused the Judge-Admiral awarded L.5 expenses and L.25. 4s. 4d. for extracting decret. Thereafter Bontein brought a process of damages against the owners for his long imprisonment, and the Judge modified L.100 of damages and L.5. 7s. 8d. for extracting decret; and the owners presented a new bill of suspension of both decreets, which was this day reported by Lord Dun; and we all agreed that a suspension of a decret-absolvitor was not competent, as we found before, 24th February 1741, Danish Asiatic Company against Earl of Morton and others, and therefore refused the bill as to the decret as incompetent;—but then as to the Judge-Admiral's decret itself, we agreed that by the act 16th Charles I. no Court in Britain was bound to execute the decret of Council and which ought to be executed only in Jamaica, pretty agreeably to our judgment 2d December 1736, Eveleigh against Sir John Bruce; but we differed from the Judge-Admiral as to the competency of the process before him. We thought that action lay against Bontein for the seizure of the ship, as we found in the case of Hamilton against Dutch East India Company, and that the defence sustained in that case on the condemnation could not be here pleaded, because the condemnation in Jamaica was reversed upon appeal to the proper Court, as we must have repelled the condemnation in the other case, had it been reversed on the appeal then made in Batavia, or had there been an appeal to the Courts in Holland, and the sentence been reversed there. Therefore we passed the bill as to the expenses in the first decret and as to the L.100 sterling damages in the second decret.

FRAUD.

No. 1. 1735, Jan. 17. PURDIE *against* LORD TORPHICHEN.

THE Lords found John Purdie's disposition not reducible upon the act 1621, in respect of the clause whereby the son John undertook the burden of his father's debts, but remitted to the Ordinary to hear parties anent the delivery of the disposition, and that possession followed upon it, and the other points in the cause.