SERVICE AND CONFIRMATION.

No. 2. 1734, July 5. DOUGLAS, RELICT OF PLENDERLEITH, *against* HOGG.

THE Lords found, that the right of executry in case the defunct's testament be reduced will accresce to the pursuer her executors and assignees. The President said, if one who was not nearest of kin were confirmed as such, the executry would accresce to the true nearest of kin, and the person confirmed behoved to convey it to him, and he seemed to be of the same opinion should one be confirmed executor testamentary upon a forged nomination; and they all thought the conditional confirmation demanded a novelty not to be granted, being like a conditional *aditio hæreditatis*.

No. 3. 1734, July 16. DAVID WILSON *against* MARTIN.

THE Lords were of opinion as the Commissaries had been, that one being confirmed executor *qua* nearest of kin who was not nearest of kin, the confirmation is not void and null, but the executor is obliged to denude; and therefore in this case they remitted to me to hear the petitioner and the surviving sister how far they were obliged to denude.

No. 4. 1735, Nov. 7. GRAHAM *against* REID.

See Note of No. 1, *voce* ASSIGNATION.

No. 5. 1736, July 30. CREDITORS OF SCOTT *against* HAMILTON BLAIR.

THE Lords found the Lady Blair was fiar, and that the heir of the marriage might gratuitously alter, and indeed the case was in effect the same as that of Elchieshiels, (Edgar against Maxwell, No. 6, *infra*,) 9th July 1736.—July 30th, The Lords adhered.

No. 6. 1736, July 29. EDGAR *against* MAXWELL.

THE Lords found that the son of the second marriage, could gratuitously alter the destination in the contract of marriage, and repelled the defence that there was no title made to the contract, in respect of the answer, that he made a title to the estate as heir of the investiture, 6th July 1736.—29th July, The Lords adhered to the interlocutor of 6th, but superseded till November as to the lands in which Gavin and Alexander Johnston were not infeft. 21st July 1738, The Lords found that Gavin Johnston's service as heir-male to Alexander his father did not vest in him the right of the procuratory in Alexander's contract of marriage with his first wife, and that therefore Edgar might yet serve heir to that procuratory.