

DECISIONS
OF THE
LORDS OF COUNCIL AND SESSION,

COLLECTED BY

JAMES BURNETT, LORD MONBODDO.

1738. *November 25.* M'DOWALL *against* CREDITORS of CRICHAN.

[Elch. No. 2, *Heir cum beneficio* ; Kilk. No. 2, *ibid.* ; C. Home, No. 104 ;
Kaimes, *Rem. Dec.* No. 27.]

The Lords found that the citation and decret thereupon gave no preference in this case, the subject being *in medio*. But they seemed to be of opinion, if actual payment had been made, that not only the heir would have been liberate in so far, but that the creditor, paid in that manner, would not have been obliged to repeat to the other creditors ; in respect that the entering *cum beneficio* only restricts the claims of the creditors, but does not alter the nature of them ; so that the creditors in every other respect *eodem jure utuntur*, as in any other case.

1738. *December 1.* CHILDREN of COLONEL JAMES CAMPBELL *against* CHILDREN of the Eldest Son of the said COLONEL.

[Elch. No. 2, *Arb. Boni Viri* ; No. 14, *Mut. Cont.* ; No. 20, *Jurisdiction* ;
Kilk, No. 4, *Provisions to Heirs, &c.*]

COLONEL James Campbell, in his contract of marriage, obliges himself to provide 40,000 merks, his present stock, to himself and wife in conjunct fee