No. 5. 1736, Jan. 8. COLONEL ERSKINE *against* BLACKADDER.

See Note of No. 1, *voce* SERVICE OF HEIRS.

No. 6. 1736, Dec. 6. CASE OF HEPBURN OF HUMBIE.

THE Lords found the homologations of the submission relevant and proven. Royston thought the designation of the witness, Esquire, sufficient, but most of the Lords were of a different opinion, but it was not determined; and they went on the homologation, which was the only point reported, 10th November.—7th December, They unanimously adhered.

No. 7. 1736, July 8. FRANCIS SCOTT *against* LORD NAPIER.

THE Lords found, that my Lord Napier's lawyers and doers cannot be interrogated as to writings shewn them on behalf of my Lord in the course of their employment for him, on any other terms than my Lord himself might have been examined by former interlocutors, that is, upon a special condescendence; and they thought, as to the other point, that the pursuer could not call for writings, though condescended on, unless they shew or prove their interest in them, 15th February.—8th July, The Lords adhered.

No. 9. 1738, Jan. 3. CAMPBELL *against* CAMPBELL.

IN a reduction *ex capite lecti*, an objection against a witness was reported by Royston, without informations, viz. That she was mother to the pursuer and grandmother to the defenders, she being widow of Colonel Campbell, and brought to prove the state of his health at making the deed quarrelled, which was 20 years ago. My difficulty was, Whether a parent could be at all admitted as a witness either for or against a child? for as to any remote relation, the quality of the relation to both parties, and the nature of the fact to be proven, which was a domestic one, removed the objection: but the rest of the Lords thought that the L. 6. C. *De Testibus* did not take place with us, at least in civil cases. Arniston said, that if the proof was to affect the child personally, the objection would be good, but not otherwise; and they all voted to repel the objection, except Royston and I, who did not vote.

No. 10. 1738, June 13. PHILLIPS *against* CRICHTON.

PHILLIPS having caused the witnesses attest the subscription, which, though a true subscription, yet they had not seen the party subscribe, nor heard him own his subscription, the Lords committed Phillips to prison for a month; but because of his youth and acknowledgment, would inflict no further punishment. As to the witnesses, several of the Lords thought they ought not to punish them, because the only proof was by their oaths; and they thought, that in law, a party could not be punished upon his own evidence. Others, *inter quos ego*, thought, that the crime of forgery was by our law an

exception from that rule, as appears from Mackenzie's Criminals, the case of Captain Barclay, where the witnesses were punished allenarly upon their own evidence, and several others, and especially by the act 1681, which supposes that the evidence must be by the witnesses own testimonies, because regularly the indirect manner of improbation is not competent while the direct *per testes insertos* is extant, and till the deed be improven, there can be no punishment of the witnesses. However, the Lords thought it better to give no judgment upon that matter, and therefore passed them over without notice.

No. 11. 1738, July 27. PROCURATOR-FISCAL OF ADMIRALTY *against* M'KENZIE.

See Note of No. 17, *voce* JURISDICTION.

(Erratum in the text,—instead of "general" read "generic.")

No. 12. 1738, Dec. 12. CHARTERIS *against* DAVIDSON.

The Lord sustained the objection, that one of the instrumentary witnesses to the contract between Redpath and this suspender Charteris was within the age of 14 years, notwithstanding the suspender acknowledges that the contract was signed by him; and repelled the allegeance of homologation, for they did not find the acts condescended on sufficient to infer homologation, *me referente*.

No. 13. 1738, Dec. 12. DR ARNOT *against* ELIZABETH YOUNG.

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

No. 14. 1740, July 24. LEITH of Leithhall *against* GORDON of Law.

See Note of No. 5, *voce* COMPENSATION.

No. 16. 1742, July 22. THOMSON *against* BORTHWICK, *alias* STRAITON.

IN a suspension and reduction of a bond by a principal and cautioner, by the cautioner, as granted by him in minority, when he had curators, and without their consent; and it being alleged, that, at granting the bond, he said he was major, and both parties allowed to prove;—upon the proof, the minority and having curators was proved, though he was within six months of being major. For proving the allegeance, that *majorem se dixit*, the creditor adduced the instrumentary witnesses to the bond, who were his own father and brother, and proved, that the creditor not being to be present when the money was to be paid, wrote to his father that he doubted if the cautioner was of age;—that he put the question to him, and he said he was of age. Two questions occurred, 1st, Whether this was proveable by witnesses? because of a decision in Durie, 27th February 1637, (Dict. No. 156, p. 9025.); 2dly, and chiefly, Whether the creditor's father and brother, though instrumentary witnesses, were habile? (for they were adduced before Commissioners, and the objection referred to the Court;) and it carried that they were not. In which I did not vote, for I doubted much whether they were not necessary witnesses to