ferred and to have it eiked to her confirmation because not *dolose* omitted, having been discovered by her to a meeting of her husband's creditors before the confirmation, but left out because it was payable only after the debtor's death, who was and is still alive; and the other denying that discovery and insisting on the point of law, that being omitted he who raised the first edict *ad omissa* should be preferred, I am told, (being myself in the Outer-House) that the Lords before answer allowed the executrix to prove the above fact.

No. 7. 1739, Nov. 7. MRS JEAN CRAICK *against* ANN NAPIER.

THE Lords adhered to their former interlocutor, and found that an assignation even to a curator which was in effect but a settlement of his succession of a moveable estate was valid in law; 2dly, That the general nomination of executor and universal legatee carries the subject, notwithstanding the substitution made by the father.

No. 8. 1741, Feb. 26, 27. MARGARET MOUBRAY *against* AGNES SIMPSON.

SEVERAL of us, particularly the President, Drummore, and I, thought that all executors whether creditors or nearest of kin being confirmed, must communicate cases of all transactions made after confirmation; 2dly, That executors-creditors are not obliged to communicate the benefit of transactions before they were decerned; 3dly, That neither are they obliged to communicate eases obtained betwixt the decreet-dative and the confirmation. Arniston differed as to this last. But as the defender here was relict of the defunct, and by law had a share of executry unless excluded by contract of marriage, 2dly, we were told that the transaction with Primrose the creditor was in effect to pay him out of the executry,—we delayed till these writs were produced;—and on the 27th in respect of the contract betwixt her and Primrose, where she acts as executrix, obliges herself to confirm and assign a subject part of the executry to Lord Primrose in security of the debt,—remit to the Commissaries with instructions, that they cause the executrix communicate the benefit of the transactions.

No. 9. 1742, Feb. 19. COLONEL M'DOUALL *against* MR C. M'DOUALL.

THE Lords found that the citing within six months an intromitter with a defunct's effects, who afterwards confirmed as nearest of kin, though not within the six months but about a month or two after, did not give that creditor a preference to other creditors who did no diligence within six months; and refused a bill without answers, and adhered to Drummore's interlocutor preferring them *pari passu*;—though a petition against an interlocutor of mine in another cause to the same effect, on a citation against an executor *qua* nearest of kin confirmed in six months, but when no creditor had obtained any preference (was ordered to be answered.)

No. 10. 1742, July 21. CREDITORS of JOHNSTON *against* DICKIESON.

A CREDITOR citing an executor *qua* nearest of kin within the six months, when no other creditor used diligence within that time, found to give no preference to him exclusive of the other creditors, since no creditor had used complete diligence, but only to prefer him *pari passu* with them; and adhered to my interlocutor unanimously, only Dun seemed to

doubt. The President said that he was for having the petition answered till he considered the act of sederunt 1662, but none thought the interlocutor right.

No. 11. 1743, Nov. 2. ARMSTRONG *against* SIR D. CAMPBELL.

AN executor having letters of administration in Ireland here, was ordained to confirm before extract.—N. B. The pursuer did not oppose.

No. 12. 1743, Nov. 22. ANDERSON *against* ANDERSONS.

THE question was, Whether a discharge by a son to his father, his heirs, executors, and successors, of certain intromissions with effects of the sons, and of his bairns part of gear, and of all he could claim of or from him and his foresaids by and through his decease, or for any other cause or occasion whatsoever, did exclude the son from succeeding in the dead's part? The Commissaries found that it did exclude him. But upon Arniston's report we found it did not, as we found in a like case 30th June 1741, Pringle against Pringle.

No. 13. 1744, Jan. 3, 13. CREDITORS of MR MURRAY, *Competing*.

THE Lords unanimously found that the lodging the money in Chalmers's hands did not put it out of Mr Murray's power, and that it remained *in bonis* of Mr Murray, but found sufficient evidence that the bill of L.288 was of the proceeds of Sir James Rochead's executry, and therefore found the creditors and nearest of kin of Sir James Rochead preferable to the creditors of Murray the executor; and adhered to the interlocutor as to Gordon's bill of L.120 sterling, allowing him retention; and as to the question with Miss Murray as to the household furniture, there the chief question was anent Miss Murray's right of redeeming the household furniture, whether the creditors can take the benefit of it. The point anent the L.288 bill Arniston said never was pleaded, and gave his opinion for the alteration, and 13th January Adhered as to the L.288. I was in the Outer-House.

No. 14. 1744, Feb. 10. LORD NAPIER, &c. *against* HAMILTON, &c.

THE Lords found that the cautioners ought to have credit for debts paid by Mr Thomas Menzies before confirmation, notwithstanding he had intromitted with other moveables of the defenders without title, and that the creditors were not bound to instruct these intromissions exhausted.

No. 15. 1744, Nov. 27. CREDITORS of MURRAY *against* HIS RELICT.

MARQUIS ANNANDALE being debtor by an open account to Hugh Sommerville, his Commissioners gave a precept on his factor to pay the money to Mr Geddes and Mr Murray, they giving their discharge. Mr Murray had confirmed his wife executrix to her father, but did not give up this and his own agent-accounts, and Mr Murray died before the money was paid. His relict and Mrs Geddes afterwards eiked this to the testament, and compete