mentary nature. The President, Dun, Arniston, Murkle, and Haining thought that an heir could not claim a legitim, (except in the case of more children that the heir may collate) and that though where there is one only child who is heir and a relict, the relict has but a third, as was found in the case Trotter, 12th January 1681, (DICT. p. 2375) yet the defunct may dispose of the other two-thirds as dead's part, and there there was no deed by the defunct disposing of it, and therefore the only child had the whole two-thirds; but where there is no relict the dead's part is the whole, notwithstanding there be one only child an heir. Others of us thought the heir's legal right to the legitim was a necessary consequence of the right of collation with other children, and of that judgment in 1681, and of the instructions to the Commissaries in 1666, and agreeably to the analogy of law, and consequently if he has a legitim the defunct cannot prejudge it; and upon the question all except those above found that the pursuer had right to his legitim. —N. B. The Justice-Clerk did not vote because he was a creditor of Mr Justice, and said he believed that was the best fund of his payment.

No. 3. 1737, Nov. 18. JEAN BEGG *against* JEAN LAPRAICK.

See Note of No. 1. *voce* FORISFAMILIATION.

No. 4. 1738, July 21. M. CAMPBELL, &c. *against* LADY INVERLIVER.

THE Lords found the renunciation operates in favour of the children and issue of the eldest son as well as of himself. I thought the interlocutor just, since all the dispute was occasioned by the son's neglecting to confirm; but we all agreed that such renunciation would not operate in favour of collaterals. 2dly, I put the question, What if the eldest son had died before his father but leaving children, and the father had made no settlement? and it was agreed that that question would be still more doubtful. 29th July, Adhered unanimously, and refused a bill without answers.

No. 5. 1741, June 30. ANDREW PRINGLE *against* ALISON PRINGLE.

THE question, Whether a discharge by a son to his father of the mother's contract of marriage, legitim, bairns part, and of all that he could ask or crave or claim of his father in his lifetime, or in and through his decease, did cut off the son from the dead's part;— and the Lords found it did not, *nem. con.*

No. 6. 1742, Feb. 3, June 2. ROBERTSON *against* KERR.

ARNISTON and I agreed that the pursuer had no claim on the contract of marriage, both because he had no title as creditor, *i. e.* as heir general to the major, and also because it was implemented to the child; and the substitution did not alter the case as to the pursuer, for had there been no substitution the succession to the moveables would not have gone to heirs but to the child's executors, which would have been an effectual alteration though made on death-bed; 2dly, We also agreed that the pursuer's claim of the child's legitim is good because that was a right not dependant on the father's will, and to which therefore he could not substitute; 3dly, We agreed that the testament was valid though

proved not to have been read to the testator before signing in the witnesses hearing, because there was no evidence that the testator did not himself read it with his own eyes; Drummore thought there was a good claim on the contract of marriage for the legitim, and thought the testament null. The President thought the testament null, but thought no claim lay either for the legitim or on the contract. Upon the question, the Lords first repelled the reasons of reduction of the testament; 2dly, found that there is no claim to the pursuer as substitute in the contract of marriage; 3dly, found that the pursuer may claim the child's legitim. 2d June, They adhered as to the third point; and 15th December adhered as to the first.

No. 7. 1749, Jan. 18, Feb. 22. Agnew of Sheuchan *against* Agnew.

A younger son having accepted a provision in satisfaction of legitim and bairns part of gear but not of executry, the father died intestate, and the younger brother sued the eldest son and heir for the whole executry, who founded on the renunciation and claimed the legitim. Answered, there is no legitim due to the heir, but the whole executry falls to the pursuer notwithstanding the renunciation, and Dun found so; and upon a reclaiming bill we adhered, *me renitente*, because we had often found in 1622, 1681, and 1737, that when there is an only son though he be also heir, he is entitled to a legitim. And Lord Stair says, that if only one child, the heir unforisfamiliate, he is entitled to a legitim, and if there had been a relict she would have had only a third, and the heir must have had the other third as legitim, because the pursuer could not take a legitim, and the pursuer would take the dead's part only. The President thought the heir might diminish the relict's part, but could take nothing in competition with the younger children though they have renounced, and even thought that though the younger children renounce both legitim and executry, that it would not go to the heir; and 22d February adhered, *renit.* Milton, Minto, Kilkerran, *et me.*

LETTER OF CREDIT.

No. 1. 1738, Jan. 4. M'Lennie *against* Somervell.

Found (13th July 1737) that the letter implied an obligation on Somervell to relieve Lochead, (the charger's author) of all damage in delaying diligence against Carrick, but that he had the benefit of Carrick's being first discussed. 4th January 1738 The Lords adhered.

Nos. 2. and 3. 1743, Dec. 6. Goodlet of Abbotshaugh *against* Lennox.

Woodhead in July 1736 wrote to Abbotshaugh a letter of credit in favours of Andrew Lees, to sell him 100 bolls bear, and it was it seems complied with, for in June 1737