the limitations of the entail were inserted, nor all the substitutions, but only such as were necessary to connect his title to the lands.

This carried only by the President's casting vote; *dissent.* Prestongrange, Kilkerran, Milton, Bankton.

1757. *December* 14. GRAY *against* LINDSAY.

[*Fac. Coll.* II. No. 66.]

1758. *February* 10. Adhered to this interlocutor, but not by a great majority. It was said that curators were given to minors, not only for their own sake but for the sake of their heirs; and therefore a minor, without his curators, could not alter the succession even of his moveable estate, except by way of testament; for example, he could not lend out his money and take the bond to himself, and to any particular series of heirs.

The case, upon the review, appeared more doubtful; and it may be doubted whether this be not a donation *mortis causa,* as a middle kind of thing betwixt a deed *inter vivos* and a testament.

1757. *December* 14. SIMPSON *against* DALZIEL.

[*Fac. Coll.* II, No. 59.]

THIS was a competition among the creditors of Patrick and James Jackson, in which the Lords sustained a disposition made by a bankrupt, in terms of the act 1696, to a trustee for the behoof of all his creditors, and therefore set aside some arrestments at the instance of creditors who did not accede to the trust-disposition.

Some of the Lords put their opinions upon specialties; but the President and Prestongrange said that they did not hold these later decisions, which established that a bankrupt could make no disposition, even for behoof of all his creditors, to be law.

1757. *December* 20. BRODIE *against* STUART.

[Kilk. *eodem die; Fac. Coll.* No. 74.]

IN this case several of the Lords gave it as their opinion, and it seemed to be the mind of the majority of them, that a simple decerniture as executor *qua*

nearest of kin, without any confirmation, was sufficient to transmit to the representatives of such nearest in kin the right to bonds, or any other executry subjects; and further, that one of several nearest of kin being decerned executor, would vest the right in the rest, because they thereby acquired a right to call him to account.

It is worth while to observe here the progress of the law. First, in the case of *Drum*, they found, that a decerniture as executor *qua* nearest of kin, with the confirmation of a part, vested the whole; then, in the case of *M'Whirter*, they found that the possession of the *corpora* of moveables, without either decerniture or confirmation, was sufficient to transmit the right to such *corpora*; then, in the case of one *Spence*, she being decerned executrix *qua* nearest of kin, and having conveyed to her husband certain bonds due to the defunct, and he having upon that conveyance taken a decreet of constitution against the debtor's heirs, and thereupon adjudged,—this adjudication was sustained, in a ranking of creditors, though the wife died without completing her title by confirmation: And now the majority of the Lords seemed to be of opinion that a simple decerniture, without any thing following upon it, vested the subject sufficiently, not only in the person of him who was decerned executor, but in the person of the other nearest of kin, not decerned executors, for whose behoof, as well as for his own, he was supposed to hold the office.

In the papers it was said, that a decerniture of executor *qua* nearest of kin was equivalent to a nomination in a testament-testamentary, in which case it could not be doubted but the right of the nearest of kin vested without any confirmation by the executor nominate, or any thing done by such nearest of kin.

But the point was not determined in general, but went off upon certain specialties, such as, that one of the nearest of kin was not only decerned executor, but made an inventory of all the bonds and other effects, and further, he granted an obligation to the other nearest in kin, obliging himself to account to them for his intromissions, and also he confirmed one bond, which the debtor otherwise refused to pay; but then, before this confirmation, one of the nearest of kin was dead, whose share, nevertheless, the Lords found, transmitted: so that, though the decision was put upon specialties, yet it can only be supported upon the general point.

1758. *January* 17. COUNT ANTONIO LESLY *against* GRANT.

THE said Grant took out brieves to be served nearest Protestant heir to the estate of Balquhain; Count Antonio Lesly proponed improbation of the execution of these brieves.

The President was of opinion, and the majority of the Court seemed to be of his mind, that such improbation could only be proponed *sub periculo causæ*: so, he said, it had often been decided, particularly in cases of election of burghs, and it would be very hard if such a cause as this could be delayed,