

No. 2. 1736, Feb. 6, 13. MARGARET HAMILTON *against* MR W. GRANT.

THE Lords (6th February) adhered to the Ordinary's interlocutor preferring Mr Grant, and found that his legacy being more special derogated from the legacy of Mr Justice Meldrum. The Lords adhered to their interlocutor of the 6th instant, but had no great regard to Lord Stair's opinion. It carried six to five.

No. 3. 1737, Feb. 2. CHARLES BURNET *against* MARY BURNET.

THE Lords adhered to the Ordinary's interlocutor, finding that this legacy was not conditional, but that the fee was vested in the children from the testator's death, only the payment may be delayed.

The Lords on the narrowest majority altered, and found that only the children of the brothers that shall exist after Mary Burnet's death have right to the legacy. They avoided *dedita opera* saying it was conditional, though it truly resolved into that point. The Bench consisted of 14, viz. 13 ordinary and the Marquis of Tweeddale, the President being absent. I was in the chair, and there were for the interlocutor seven, and six were for adhering and so was I, but had no vote. 24th February, They adhered. I was in the chair, but did not put a vote.

No. 4. 1737, Feb. 18. DR CUNNINGHAM *against* LIVINGSTON.

THE Lords found that a legacy of household furniture and moveables, lying in such a particular house, or elsewhere, did not comprehend lying current coin, whether domestic or foreign, nor *nomina debitorum*, and therefore adhered to the Ordinary's interlocutor, refusing a bill of advocation on that ground.

No. 5. 1738, June 15. PHIN *against* GUTHRIE.

THIS petition makes the distinction betwixt legacies and *fidei-commissa*, very ingeniously, and I incline to be of the opinion of the petition, but as no answers were put in, because there was no more than would pay the particular legacies, I thought a point of that importance should not be unnecessarily determined *ex parte*, and therefore moved to remit it to the Ordinary, but the President was keen to have it determined, and the Lords found Guthrie the executor liable to hold count in the terms of his oath.

No. 6. 1738, Nov. 19. CREDITORS of DOUGLAS of Glenbervie.

See Note of No. 8. *voce* ALIMENT.

No. 7. 1740, June 13, Nov. 11. CAMPBELL, &c. *against* CAMPBELL.

THE Lords first found that the substitution in case of Provost Campbell's decease to Margaret Campbell does still subsist, notwithstanding the Provost survived his son the testator, for they thought the Roman law with respect to the *vulgaris substitutio* does not hold with us. The President and Murkle were of a different opinion; and they found