

with Mr Hugh Murray's, her husband's, creditors. Arniston, President, Dun, and I, and even the            was of opinion for the husband's creditors, and all that spoke except Lord Tinwald. However, the procurators for the Lady moved for a hearing. We ordered one for Friday;—and after full hearing we found that the whole deads part of executry was established in the nearest of kin by confirmation, so as to transmit to their assignee voluntary or legal, notwithstanding that sundry particulars had been therein omitted. 1st December. *Con.* were Haining, Strichen, Kilkerran, Tinwald.—23d January 1745 Adhered, *renit.* Kilkerran and Tinwald.

No. 16. 1744, Dec. 18. BLAIR *against* DUN.

My opinion here was founded on a point not at all mentioned in the papers, viz. Whether an executor nominate is liable further than he actually confirms or intromits with, though he knew of the other debts?—and it carried pretty unanimously that he was not liable either to creditors or nearest of kin;—and found that a depending process of count and reckoning for that executry was no sufficient ground of compensation or retention of any liquid debts due by Blair the executor to Dun.

No. 17. 1745, July 30. CUNNINGHAM'S CREDITORS *against* GAINER.

MARY GAINER and her daughter were decerned executors upon a general assignation, which the creditors opposed, but the Commissary preferred her;—and now the question is, Whether the plate should be roup'd to the highest bidder, or if she be allowed to keep them at the appraised value? The Commissary ordered them to be roup'd. She raised advocacy, and Tinwald remitted with instructions not to roup;—and the Lords Adhered, *renit.* President, Dun, *et me.*

No. 18. 1744, Dec. 21. M'DOUALL *against* HIS FATHER'S CREDITORS.

THE Lords found, that such debts as he was cautioner in for his father, whether the debts were paid by him before or after confirmation, he might pay himself, and therefore altered the Ordinary's interlocutor. 2dly, Also as to debts paid by him before confirmation, wherein he was not cautioner, he might pay himself;—and therefore altered the Ordinary's interlocutor also as to that point, which preferred him only *pari passu* with the other creditors.

No. 19. 1745, July 9. BIGGAR *against* HELEN BEE.

WE first found unanimously, at least *nem. con.* that the daughter having survived her mother and possessed, the *corpora* ought to be confirmed as *in bonis* of her in name of her executors. The second question was as to accounts and book-debts arising from the brewery, carriage of coals, &c. if they ought to be divided betwixt the mother and daughter, that is, the daughter's executors and mother's nearest of kin in proportion to their legal interest in the effects of John Wallace, if he left any free, (which was Arniston and Tinwald's opinion) or if the whole belonged to the daughter, who alone had right to the tack;—and it was carried that these accounts belonged to the daughter. *Con.* were Strichen,