

No. 6. (1736.) 1738, Dec. 10. WAUCHOPE *against* WAUCHOPE.

THE Lords generally thought that administrators cannot settle their constituents succession, though their necessary or reasonable deeds of administration may have the effect of altering the succession, as taking securities upon land, leading adjudications, lending money upon annualrent (before the act 1641 as to heirs, and since that time *quoad jus mariti et relictæ*) but cannot make destinations of succession by secluding executors without the knowledge and consent of their constituents, though some seemed to differ as to that; but most of us thought that Niddry's knowledge of his Commissioners' resolution in their sederunt-book would be a good defence; (and I and others thought his knowledge presumed from his letter in March 1722) and therefore gave a diligence for proving such knowledge even by witnesses; wherein we had the less difficulty, that it was only to support the express approbation of all their resolutions in that letter; but Newhall differed. —29th January 1736.

THE Lords found sufficient evidence of the late Niddry's knowledge and approbation of the Commissioners' resolution to change the bonds, and take them to heirs, secluding executors; and therefore repelled the objection reported to us as to old bonds changed, and money new lent out. Third point, of money laid out on heritable security lies yet before Lord Newhall, Ordinary. Newhall, Minto, and Balmerino, dissented from the interlocutor, 24th July.—10th December, Unanimously adhered.

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

See Note of No. 7, *voce* EXECUTOR.

No. 8. 1741, July 1. BLAIR *against* SUTHERLAND of Kinminity.

WE agreed that actual collation was not necessary. 2dly, We seemed also to agree, that the minority of their executors, or their majority, could only be considered in the question of prescription; and the point seemed to come to this, Whether the minority of John Blair, one of the co-executors, can be preferable *quoad* the half of Katherine the co-executrix, who was major, but who made over her interest to John in 1708, after he also was major? And the Lords found that it stopped the prescription as to the whole.

No. 9. 1743, Nov. 8. MR MURRAY OF CRINGLETIE'S SON, &c.

A COMMISSION from the Crown under the Great Seal was presented in favour of Murray, son to Cringletie, to be Clerk or Keeper of our Minute-book.—Arniston objected to the Crown's power of granting that commission, because it was in the power of the Clerk-Register, and that the reservation in the Clerk-Register's commission was against law, several of these under officers commissions being vested in him by statute. 2dly, He objected that Mr Murray was minor. The Lords superseded till this day fortnight, that