President joined,* as did I likewise in consideration of the smallness of the sum, which removed any suspicion of deceit; but we all, almost, agreed that had it been a large sum we would have thought the proof insufficient.

*** The case of Barisdale is referred to by Lord Elchies in his Dictionary, as in his Notes. It relates chiefly to a misnomer, and is mentioned along with the cases of Pitsligo and Lochiel, but without date. The Editor has not yet found it. See SUPERIOR AND VASSAL. See also TAILZIE.

FORISFAMILIATION.

No. 1. 1737, Nov. 18. JEAN BEGG *against* JEAN LAPRAICK.

THE Lords found, that Jean Begg having accepted of a provision in full satisfaction of âll portion natural or bairns part of gear, without mention of executry dead's part or moveables she might succeed to by and through her father's decease, does not exclude her from a share of her father's dead's part as one of his executors, he having died intestate; and therefore found that she hath right to an equal share in the dead's part with her brothers and sisters, and that the same falls to be divided amongst them *secundum capita*; and further found the *proviso*, that the said Jean Begg was only to be a bairn in the house with the rest of his daughters but not in the least with his sons does subsist and is effectual in favour of the sons, notwithstanding of the father having died intestate, and of his having made no deed of provision in favour of his sons; and therefore found that the sons have right to the same legitim or bairns part as if Jean had not existed at the time of her father's decease; and in respect that Jean is only provided to be a bairn in the house with the rest of the daughters, and that the father could not nor hath not by any clause in the contract prejudged the daughters as to their legal share in the legitim, found that each of the daughters excepting Jean must have an equal share in the whole legitim according to the division of law amongst the whole children including Jean, and therefore found, that after deducting the shares of the sons as if Jean had not existed at the time of her father's death, and after allowing to each of the other daughters such share as would belong to her according to the division of law, taking in Jean as a bairn of the house, that the remainder of the bairns part or legitim only belongs to Jean and no more; and found that Jean is not obliged to collate her tocher, but hath right to the same as a *præcipuum*, and remit to the Ordinary to proceed accordingly.

Upon this case sundry questions did arise that are all determined by the above interlocutor. I own I doubted as to the dead's part, that by our practice accepting a provision in satisfation of legitim without expressing executry or moveables was a forisfamiliation, and excluded that bairn in competition with bairns in family from any share of the dead's part as well as of the legitim. If that was the law, in this case the division of the dead's part must have been in the same proportion as of the legitim. But all the rest of the

* President Craigie was admitted on 2d February 1754.

Lords were of the opinion of the above interlocutor. I likewise doubted whether the parties intended any more than to reserve to the father a power to provide his sons *ad libitum*, but I own the last part of the clause is very strongly expressed, and the Lords could not find any way of extricating it so as to answer the parts of the clause, and make it consistent with law, other than by the above decision.

FORUM COMPETENS.

No. 1. 1735, July 11. RAMSAY *against* THOMSON.

THE Lords found the action here competent, notwithstanding of his having obtained sentence in the Justice-Court, as had been found 13th December 1672, Murray against French, (DICT. No. 10. p. 2917;) but found the nullity of the bill competent to the defender, but remitted to the Ordinary to hear how far the debt can be astructed even against this defender.

No. 2. 1736, Feb. 17, 21. LEGGAT *against* DUNCAN.

THE Lords found the decreet null as *a non suo domino*, and repelled the answer of *communis error*, in respect of the reply that such error could not make the defender contumacious; and here there was no instruction of the debt, other than the decreet in absence holding the defender as confessed, upon which no diligence followed against the defender, who lived many years after.—21st, The Lords refused a bill without answers, and adhered.

No. 3. 1737, June 29. TRAN and HIS CREDITORS *against* WEIR.

THE question being, Whether the Commissaries of Glasgow or Hamilton were the proper Court for confirming Tran's testament? the creditors had applied to the Commissary Court of Glasgow, upon which the Commissary of Hamilton gave out an inhibition to the Commissary to proceed; and upon his contempt they presented a bill of advocation; and the first question was, Whether, since the late act of Parliament against forcing parties to confirm, it be competent to the Commissary of Glasgow to hinder the creditors or their principal to confirm where they please? and the Lords found it not competent.

No. 4. 1752, Feb. 20. FITZGERALD and EGAR *against* BONTEIN.

IN February 1740-1 Fitzgerald Egar and others had a ship and cargo seized in Jamaica by the naval officer and condemned by a Court of Admiralty, one-third to the King's use, one-third to the Governor, and one-third to the seizure maker, and sold; but this condemnation was reversed on an appeal to the King in Council, who ordered a new trial of the cargo, but the ship or value thereof to be restored, "whereof the Governor or Com-