

No. 5. 1736, Jan. 8. COLONEL ERSKINE *against* BLACKADDER.

See Note of No. 1, *voce* SERVICE OF HEIRS.

No. 6. 1736, Dec. 6. CASE OF HEPBURN OF HUMBIE.

THE Lords found the homologations of the submission relevant and proven. Royston thought the designation of the witness, Esquire, sufficient, but most of the Lords were of a different opinion, but it was not determined; and they went on the homologation, which was the only point reported, 10th November.—7th December, They unanimously adhered.

No. 7. 1736, July 8. FRANCIS SCOTT *against* LORD NAPIER.

THE Lords found, that my Lord Napier's lawyers and doers cannot be interrogated as to writings shewn them on behalf of my Lord in the course of their employment for him, on any other terms than my Lord himself might have been examined by former interlocutors, that is, upon a special condescence; and they thought, as to the other point, that the pursuer could not call for writings, though condescended on, unless they shew or prove their interest in them, 15th February.—8th July, The Lords adhered.

No. 9. 1738, Jan. 3. CAMPBELL *against* CAMPBELL.

IN a reduction *ex capite lecti*, an objection against a witness was reported by Royston, without informations, viz. That she was mother to the pursuer and grandmother to the defenders, she being widow of Colonel Campbell, and brought to prove the state of his health at making the deed quarrelled, which was 20 years ago. My difficulty was, Whether a parent could be at all admitted as a witness either for or against a child? for as to any remote relation, the quality of the relation to both parties, and the nature of the fact to be proven, which was a domestic one, removed the objection: but the rest of the Lords thought that the L. 6. C. *De Testibus* did not take place with us, at least in civil cases. Arniston said, that if the proof was to affect the child personally, the objection would be good, but not otherwise; and they all voted to repel the objection, except Royston and I, who did not vote.

No. 10. 1738, June 13. PHILLIPS *against* CRICHTON.

PHILLIPS having caused the witnesses attest the subscription, which, though a true subscription, yet they had not seen the party subscribe, nor heard him own his subscription, the Lords committed Phillips to prison for a month; but because of his youth and acknowledgment, would inflict no further punishment. As to the witnesses, several of the Lords thought they ought not to punish them, because the only proof was by their oaths; and they thought, that in law, a party could not be punished upon his own evidence. Others, *inter quos ego*, thought, that the crime of forgery was by our law an