

1740. *February 10.* PRINGLE *against* PRINGLE.

[See Elch., No. 15, *Mut. Cont.*; Kilk., No. 5, *Pror. to Heirs, &c.*; C. Home, No. 145.]

THE Lords found, That it was to be presumed that the father intended, by giving his land to his eldest son, to satisfy him for his share of the provision; and therefore preferred the executor.

N.B.—This carried narrowly, against the opinion of the President and Drummore.

1740. *February 14.* WALKER *against* ———.

A CONTRACT was reduced upon the head of fraud and circumvention; and Walker, the defendant, was condemned to pay £100 sterling, in name of damages and expenses.

The pursuer gave in a petition craving that the interlocutor might be so explained, that 300 merks, which Walker had given the pursuer in consideration of the contract reduced, might be deduced from the foresaid L.100 sterling; which petition the Lords having advised with the answer, found, That Walker could not retain the 300 merks off the L.100, but reserved him action as accords. Some of the Lords, particularly Arniston, doubted whether he could have any action for recovery of the 300 merks. Elchies thought he could have none. Others thought that by the reduction every thing ought to be brought back to the former state,—*restitutio enim ita facienda est ut unusquisque in integrum jus suum recipiat*; and so were for giving Walker retention of the 300 merks.

1740. *February 14.* ——— *against* ———.

THE Lords found that it was an illegal and unwarrantable practice for the same person to officiate both as clerk and procurator before an inferior court.

1740. *February 14.* SIR HARRY INNES *against* CREDITORS of LUDOVIC GORDON.

[Elch., No. 14, *Arrestment*; Kilk., No. 8, *ibid.*]

THE Lords found that the arrestment was valid. Arniston thought it was so,