

1738. December 6. JOHN NORRIS *against* BETHIA LAW.

No. 6.

A PRINCIPAL executor will get any subject omitted eiked to the testament preferably to a creditor seeking to be confirmed *ad omissa*, if the executor can prove that it was not *dolose* omitted.

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1739. June 23.—November 7.

Mrs JEAN CRAICK *against* ANN NAPIER.

No. 7

A NOMINATION of an executor and sole legatar and intromitter by a pupil, found to carry bonds left to the pupil by the father, though containing a particular substitution of other persons, and which bonds therefore would not have fallen to the child's executors *qua* nearest of kin, but to the substitutes. *Vide inter eosdem voce* MINOR. (See DICT. No. 18. p. 4325.)

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1741. February 27.

MARGARET MOUBRAY *against* AGNES SIMPSON, her Brother's Relict.

No. 8.

A RELICT being decerned executrix *qua* creditrix to her husband, and then another creditor being also decerned, the relict transacted with him, got an abatement, and gave her obligation for the transacted sum, obliging her particularly to make over to him particular subjects, part of the executry for his further security; after which she took a new decret dative upon that and her former grounds of credit, and then confirmed. The Lords found her bound to communicate the benefit of the ease to the executry, that is to the nearest of kin, and allowed her credit only for the sum truly paid, and remitted to the Commissaries with that instruction; though we thought that a creditor transacting a debt due to another creditor, before he himself was decerned executor, would not be obliged to communicate the ease; and several of us were of the same opinion as to transactions even after the decret-dative and before confirmation; but we thought she made this transaction *qua* executrix, and though not actually confirmed, yet she thereby obliged herself to confirm. (See DICT. No. 20. p. 3829.)

Communication of cases.