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

they might consider the first point, and order Mr Murray to appear that day to condescend upon his age.—27th January 1742.

THIS commission, which is mentioned *supra*, 27th January, was under consideration this day fortnight, when both President and Arniston seemed to think the first objection good, though we had no statute vesting the nomination of this officer in the Register. Arniston was clear, and the President was positive, that in England it would be good, because it would be looked on as part of the Constitution; but at the President's entreaty Arniston dropped the objection. As to the second, Mr Murray was called, and ordered to give an account of his age against this day, when he gave in a petition showing why we should not enquire into his age, there being no law that required majority, and Advocates and Notaries were admitted under age, and the Interim-Keeper that the Court has appointed is yet under age. We refused the petition; but ordered the present Interim-Keeper to attend at 12 o'clock;—and 7th February we removed the Interim-Clerk, having appointed another,—10th February 1742.

MR MURRAY'S commission being refused 10th February 1742, as under age, he being now of age, presented his commission again. Arniston thought the commission void, and there needed a new commission, which occasioned his presenting a memorial, and it carried to admit him, *renit.* Arniston *et* Balmerino. I thought that it was the general sense of the country, and in consequence thereof very often persons in office take now conjunct-commission to themselves and their children.

No. 10. 1744, Jan. 27. CURATORS OF MISS MURRAY *against* MISS MURRAY.

THOSE curators complained that Miss Murray refused to concur with them in appointing a factor with very large powers. We would not order the minor to answer, but allowed her to answer if she thought fit, and which she did, and told us she was very willing to name a factor, but told us some reasons why she declined to grant a *factory either* to that person, or in so large terms, and told us she doubted if we could interpose betwixt a minor and her curators. The President thought that cases might be figured wherein the necessity of the thing would give us jurisdiction. Arniston seemed to think as I did, that as in no case we can compel a minor to choose curators, neither can we, after they are chosen, compel her to any deeds but what she herself thinks proper. But we all agreed not to interpose in this case, and that there was no cause for it;—and therefore in general refused the desire of the petition.

No. 11. 1744, Feb. 14. (1734.) CRICHTON *against* E. KILMARNOCK.

THE Lords sustained the defence on the allowance to my Lady the mother.

No. 12. 1749, May 11. CREDITORS OF KINMINNITY *against* THE HEIR.

KINMINNITY'S father was apparent-heir of Clyne, and possessed more than three years. After his death, some of his creditors obtained decreets of constitution against his infant son, for not producing a renunciation; whereas they renounced to other creditors,