

1744. *January 13.*

CREDITORS of Mr MURRAY of Kinninmond, *Competing.*

No. 13.

THE creditors, legators, and nearest of kin are preferred to the creditors of the executor, upon the executry goods and debts, not only while they are extant, but also after they have been uplifted or turned into money by a factor, and a bill given by him to the executor for a balance of the account. They were found preferable after the executor's death for the sum in that bill.—Adhered. *Vide inter eosdem, voce MUTUAL CONTRACT,—voce JUS QUÆSITUM TERTIO,—et voce FRAUD.*

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1744. *February 10.*

LORD NAPIER, and Others, *against* HAMILTON of Olivestob, and Mr JAMES BAILLIE, Cautioners for MENZIES of Lethem.

No. 14.

THE heir having paid sundry of his predecessor's debts, (for which he was liable *qua* heir,) and having afterwards confirmed executor, his cautioners in the confirmation were allowed to state the debts paid by him without sentence before confirmation, in order to exhaust the inventory, notwithstanding of his being heir. After confirmation he could not pay but upon sentence; we thereafter found, that the cautioners ought to have credit for those debts paid by the executor before confirmation, though he had intromitted with other valuable moveables of the defunct's without title; and found that the cautioners were not bound to prove those intromissions otherways exhausted. (See DICT. No. 31. p. 3849.)

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1744. *November 27.*

CREDITORS of HUGH MURRAY *against* His RELICT.

No. 15.

THE nearest of kin's interest in deeds part found established by confirmation even as to *omissa*. *Vide* NEAREST OF KIN. *Vide* HUSBAND AND WIFE. (See DICT. No. 89. p. 3902.)