

No. 6. 1739, July 19. ROBERTSON *against* POTTER, &c.

THE Lords found Horn being factor for a stranger was liable for the expenses of process, and that too upon the general point without regard to the specialty, in the same way they decided 16th June 1738, Pringle *against* Kennedy.

No. 7. 1739, Nov. 30. CRAWFURD *against* REPRESENTATIVES of
CRAWFURD.

THE Lords altered the Ordinary's interlocutor, and found the pursuer had the *jus exegendi*, though we thought that any defence competent against the representatives of the granters of the factory would be competent against her, and in this we were pretty unanimous, but we differed more as to John's share of executry. The fact appeared to be, that John assigned to his father on November 19th, the father and the other children granted the factory December 2d, and their factor made the transaction December 10th, and from his discharge it appeared John was then dead. But whether he was dead before the factory did not appear, so the question was, Whether John's share of the executry not confirmed before his death, which was before the transaction, went to the other brothers and sisters, or if notwithstanding thereof the father had right to it by his assignation from the son John?—and it carried, that it descended to the other brothers and sisters, of which opinion I was.

No. 8. 1749, Nov. 16. MINE ADVENTURING COMPANY *against* BROWN.

BROWN being appointed by Sir Robert Clifton overseer of his mines, and by his orders laid out considerable sums and borrowed sums to be repaid out of the first of the produce, Sir Robert assigned his right to this Company. They got possession of the mines, but a farm of M'Farlane's taken by Sir Robert upon which furnaces and other expensive works were erected was still retained by Brown; and the Company pursued a summary removing before the Sheriff of Dunbarton, who ordered him to remove. But on report by Lord Drummore of an advocacy, we found he had right to retain these subjects till the assignee pay or find caution for what shall be found remaining due to Brown, and therefore remitted to the Ordinary to pass the bill.

No. 9. 1750, Nov. 2. LADY GORDON'S CLAIMS on the ESTATE of
TARBERSIE.

LADY HARRIET GORDON'S claim was objected to because only signed by her factor, who had no special factory to enter such claim, which we repelled, because he had a factory to pursue and recover this very debt, and had before the Rebellion obtained a decret before the Court of Session in his own name. As to Henry Lumsdean,—repelled the objection to his claim that it was for bills granted after 1742, and gave the like judgment on the claim of Ann Stewart, mother-in-law to the forfeiting person. But as to Robert Barron's claim on bills after 24th June 1745, we superseded determining the objection on the vesting act

till 9th November, and after hearing at the Bar, we found the claim on this bill could not be sustained. The only thing that satisfied me was the act 4^{to} Geo. I. telling the meaning of the act 1^{mo} Geo. I. the enquiry act, which is in the same words with the last vesting act. *Renit. Dun.*

No. 10. 1751, Jan. 8. DRUMMOND'S CLAIM ON THE ESTATE OF STRATHALLAN.

It was objected against a claim for Andrew Drummond, that it was not signed by himself but by John Gordon as his factor by a factory 1737, long before the forfeiture or vesting act, and only a general factory. Answered, That the vesting act allows claims to be signed by attornies or factors, and that very necessary, because many claimants might be in foreign parts, in the East or West Indies, and the factory is very ample to sue and even uplift in his own name, but for the granter's behoof, all debts and sums of money then due or that should be due to him. Minto reported this objection for advice, and the Lords unanimously repelled the objection.

No. 11. 1753, Dec. 6. HOY, (HOGG) *against* KENNEDY and M'LEAN.

MESSRS KENNEDY and M'LEAN in Glasgow, commissioned Hogg, merchant in Rotterdam, to send them to Glasgow merchant goods, viz. madder and tartar. He shipped the goods on board of a ship for Leith 12th August 1751, and got the skipper's bill of lading, two butts and one cask, not specifying the contents. The ship sailed 25th August and was cast away 4th September, and Hogg acquainted them of his sending the goods no earlier than 14th September, and it arrived at Glasgow only a few days before the news of the loss of the ship, and did not bring with it the bill of lading, or invoice, or ship's name, but only the total sum due, and the skipper's name. They sued him for L.535 the price, and produced bill of lading and copy of invoice. They obliged him to prove that the goods were contained in these casks. But their chief defence was, that he had not advised them on shipping the goods, or before the ship sailed, of his obeying their commission, and neither sent the bill of lading nor the ship's name, so as they might insure, which they said was necessary by the custom in commissions from Glasgow to Holland. The pursuer again denied both the custom of merchants, and the custom in commissions from Glasgow;—that when Glasgow merchants intend to insure, they order the factor to do it either in Holland or England, and the letter of advice, bills of lading, and invoice, are commonly sent with the ship, which often arrives before any advice could come by post. Lord Minto, Ordinary, repelled the defence, and found expenses due;—and on a reclaiming bill without answers we adhered as to both,—and, as to expenses, thought where a factor duly obeyed his commission, he was entitled to all his expenses, whether the employers were litigious or not.

FACULTY.

No. 1. 1737, June 21. MARION TURNBULL *against* MARGARET OGILVIE.

THE Lords altered the Ordinary's interlocutor, and found the granting a personal bond in exercise of the reserved faculty could only have a personal effect, but not really