

EXECUTOR.

No. 1. 1736, July 6. LUNDIE *against* LUNDIE.

THE Lords found, that though the testament be the presumptive rule, yet overseers having been appointed by the Court, therefore the report of the overseers is the rule in this case, unless the creditors will prove greater quantities.

No. 2. 1737, June 23. MITCHELL *against* MITCHELL of Blairgorts.

THE Lords found, that Patrick Mitchell having confirmed the 2000 merks and interest thereof as creditor to his brother James Mitchell, tailor, to whom he was nearest of kin, the property thereof belonged to Patrick from the time of the confirmation, and was *in bonis* of Patrick at his death; and that James Mitchell the son and executor of Patrick having confirmed the same might habilely assign the same to Blairgorts; and found the confirmation of James the pursuer executor *quoad non executata* to old James *qua* creditor to James the son of Patrick was inept and void;—and therefore found Blairgorts the assignee preferable, and remitted to the Ordinary to proceed accordingly.

No. 3. 1737, July 5. CORNETT OGILVIE *against* STEWART.

THE Lords altered the interlocutor, and because of the executrix's renunciation of the office in England, found she or Matthew Stewart has no right to sue for this note; and *separatim* sustained the discharge by the administrator, reserving Matthew Stewart's action against the administrator in England as accords. This carried by a great majority, *inter quos* Arniston, though he had been Lawyer and wrote the answers for Mr Stewart.

No. 4. 1737, July 27. ROCHEAD *against* MR HUGH MURRAY.

THE Lords preferred the trustee Mr Murray to the office, seven to six. The Justice-Clerk did not vote.—15th November The Lords adhered.

No. 5. 1738, Nov. 7. MIRRIE, and LOCKHART, *against* INGLIS.

THE Lords were all of opinion, that when there are more executors-creditors confirmed, a debtor of the executry cannot lawfully pay one of these executors, without the knowledge or consent of the other executors-creditors but upon the peril of the payer; and as Mr Inglis did not pretend to a *bona fides*, and indeed was *in mala fide*, the Lords disallowed the payments made by him to William Inglis, and adhered to the Ordinary's interlocutor.

No. 6. 1738, Dec. 6. JOHN NORRIS *against* BETHIA LAW.

A WIDOW having confirmed her husband's testament omitted his first wife's tocher of 2000 merks. Another creditor raised an edict *ad omissa*, and the executor craved to be pre-