

proved not to have been read to the testator before signing in the witnesses hearing, because there was no evidence that the testator did not himself read it with his own eyes; Drummore thought there was a good claim on the contract of marriage for the legitim, and thought the testament null. The President thought the testament null, but thought no claim lay either for the legitim or on the contract. Upon the question, the Lords first repelled the reasons of reduction of the testament; 2dly, found that there is no claim to the pursuer as substitute in the contract of marriage; 3dly, found that the pursuer may claim the child's legitim. 2d June, They adhered as to the third point; and 15th December adhered as to the first.

No. 7. 1749, Jan. 18, Feb. 22. AGNEW of Sheuchan *against* AGNEW.

A YOUNGER SON having accepted a provision in satisfaction of legitim and bairns part of gear but not of executry, the father died intestate, and the younger brother sued the eldest son and heir for the whole executry, who founded on the renunciation and claimed the legitim. Answered, there is no legitim due to the heir, but the whole executry falls to the pursuer notwithstanding the renunciation, and Dun found so; and upon a reclaiming bill we adhered, *me renitente*, because we had often found in 1622, 1681, and 1737, that when there is an only son though he be also heir, he is entitled to a legitim. And Lord Stair says, that if only one child, the heir unforisfiliate, he is entitled to a legitim, and if there had been a relict she would have had only a third, and the heir must have had the other third as legitim, because the pursuer could not take a legitim, and the pursuer would take the dead's part only. The President thought the heir might diminish the relict's part, but could take nothing in competition with the younger children though they have renounced, and even thought that though the younger children renounce both legitim and executry, that it would not go to the heir; and 22d February adhered, *renitente*. Milton, Minto, Kilkerran, *et me*.

LETTER OF CREDIT.

No. 1. 1738, Jan. 4. M'LENNIE *against* SOMERVELL.

FOUND (13th July 1737) that the letter implied an obligation on Somervell to relieve Lohead, (the charger's author) of all damage in delaying diligence against Carrick, but that he had the benefit of Carrick's being first discussed. 4th January 1738 The Lords adhered.

Nos. 2. and 3. 1743, Dec. 6. GOODLET of Abbotshaugh *against* LENNOX.

WOODHEAD in July 1736 wrote to Abbotshaugh a letter of credit in favours of Andrew Lees, to sell him 100 bolls bear, and it was it seems complied with, for in June 1737