No. 20. 1744, Jan. 5. CRAWFURD *against* CAMPBELL.

See Note of No. 20, *voce* HUSBAND AND WIFE.

No. 21. 1744, Jan. 24. NISBET *against* HUNTER.

UPON my report without informations, the Lords found it a good objection against two witnesses in a process on the passive titles, that they were uncles to the pursuer, though they were brother-uterine to one of the defenders the wife and brother-in-law to the husband.

No. 22. 1744, Feb. 21. SIR P. MURRAY of Ochtertyre *against* MURRAYS.

THE process was about a money settlement registrated in the Sheriff-Court of Perth, and afterwards unwarrantably taken up out of the record as was alleged. The Sheriff-Clerk was adduced as a witness, and answered some interrogatories, but demurred to answer others that might affect himself. But we found he must answer as commonly happens in exhibitions, and even diligence, where the questions are, Had you given, or have you fraudfully put, away?

No. 23. 1744, Feb. 24, 28. M'ILHOSE *against* REID.

A CONCERT among creditors of a bankrupt with him to come in *pari passu*, and to discharge him; the concert as to the *pari passu* preference was admitted, but the question was, Whether the other part was proveable by witnesses? 2dly, There were but three witnesses, and two of them carried on this process and paid the expense. Arniston and I both doubted the competency of a proof by witnesses, and likewise of the hability of these two witnesses. We altered the interlocutor. We did not determine either of these points, but found no sufficient evidence of that part of the concert. But upon a reclaiming bill it was carried by President's casting vote the 28th February to grant diligence against two new witnesses to prove this.

No. 24. 1744, July 18. CAMERON *against* LAWSON.

See Note of No. 24, *voce* HUSBAND AND WIFE.

No. 25. 1744, Dec. 19. WEIR *against* STEEL.

See Note of No. 17, *voce* PRESUMPTION.

No. 26. 1744, Dec. 21. M'LEOD *against* M'LEOD.

THE question reported was, Whether John M'Kenzie, writer, could be adduced a witness against his client Cadboll, to depone what he knew of an arrestment that was used in Cadboll's hands by a creditor of M'Leod of Genzies even before the term of payment was procured by Cadboll himself. They found that he behoved to depone upon

all facts that he knew before the complaint anent this arrestment, and would not limit it to facts not told to him by his client in the course of his employment. Arniston mentioned an example, if a defender should employ his agent to scroll a discharge and that the client would get it forged.

No. 27. 1747, June 16. A. *against* B.

DRUMMORE reported a question, Whether a witness could be received who is sister to the adducer, but who is daughter to the person against whom she is adduced? Kilkerran mentioned a similar question reported by me 24th January 1744, (No. 21.) wherein I had once given an opinion repelling the objection, but upon many precedents from Balfour, Hope, Haddington, &c. taken it to report, and the Lords sustained the objection; as they did also in this case. And Arniston observed that by the argument used for repeling the objection, one might be Judge for his near relation, if the other party was equally near. A strong authority was also cited from Voet for the objection.

No. 28. 1748, July 20. MATTHEW STRANG *against* JAMES STRANG.

THE Lords found that a nephew-in-law (a niece's husband) might be adduced as a witness for his uncle-in-law in a proving the tenor of a tailzie, though what was to be proved by him was *nuda emisso verborum*. But in the same case found that the mother-in-law or a nephew who was also a substitute, could not be witnesses.

No. 29. 1749, Nov. 21. EARL OF MARCH *against* A. SAWYER.

THE Countess of March having made over a bond of L.10,000, the question was anent the delivery or not delivery. In the proof Mr Sawyer adduced two witnesses who had been the instrumentary witnesses to the bond, one of them, Dickie, is Mr Sawyer's agent in this process, the other Lamb, is Mr Sawyer's clerk in his office of paymaster, and Lord March alleges was present at consultations. As to the first, besides the case and others of that kind mentioned in the minutes, I mentioned the case 22d July 1742, (No. 16.) where the father and brother of the creditor, instrumentary witnesses to his bond, which was granted by a minor, were not admitted to prove that *minor majorem se dixit*. We sustained the objection against Dickie. *Pro* were Dun, Monzie, Shewalton, Justice-Clerk, *et ego*. *Con.* were Milton, Minto, Easdale, Murkle,—and the President seemed of the last opinion. Drummore did not vote. We repelled the objection to Lamb, because they did not offer to prove partial counsel. 12th January 1750, We adhered, because they did not sufficiently qualify Lamb's acting as agent. But on appeal Dickie was ordercd to be received *cum nota*.

No. 30. 1749. Nov. 21. JOHN BLAIR *against* DNIN.

NISBET adduced a witness for John Blair to prove John Dinn's accession to a fraud against Blair, inducing him to accept a bill drawn on them two by James Blair, on the faith that Dinn was also to accept, and for their relief an assignation was granted to them by James Blair the drawer; and Dinn had acknowledged a contrivance to that effect by