debt; 2dly, By an heir of a strict entail pursuant to a faculty to give bairns provisions to a limited extent; 3dly, The general clause can only mean claims of the same kind with those mentioned, viz. portion natural, &c. Third defence, Supposing the father liable as tutor of law, yet the action against him prescribed in ten years after the daughter's majority. Answered, That prescription only competent to such tutors as are bound to make inventories. 2dly, The father liable *super alio modo* as upgiver of the testament. The Lords thought there was some difficulty in the first and third defences, and therefore did not decide thereon, but unanimously sustained the second and assoilzied.—(29th November 1751.)

No. 21. 1752, Jan. 7. COPLAND *against* IRVINE.

IN the competition of the creditors of John Rae, an adjudication against him on a bond, wherein he was bound only as cautioner, though led 20 years after the date of the bond, was sustained for all that fell due in seven years after the date of the bond, in respect of a horning executed against him within the seven years, though never denounced or otherwise followed out, and Kilkerran's interlocutor adhered to *nem. con.*

No. 22. 1752, June 4. CAMPBELL *against* M'LACHLAN.

CAMPBELL threatening to detain the stocking and effects of one of his tenants that was removing, for arrears of rent and other debts, M'Lauchlan, a friend of the tenant's wrote to Campbell, and engaged himself for the tenant for whatever they should agree, and thereupon Campbell let the tenant's goods go. In a process against M'Lauchlan, wherein a proof before answer was brought by witnesses, that he subscribed the letter, because it was not holograph and he denied that that was the letter he subscribed, though he owned the signing a letter written by the same person engaging for the arrears of rent, but not for the other debts,—we found that mean of proof competent, because we considered it as a bargain for moveables which is proveable by witnesses.—*Sed renit.* Kilkerran, Kames, *et aliis*;—and we repelled the objection that the tenant had come to no agreement with his creditor, for that we considered as only meaning the settling of what was justly due, which was *pars judicis*; but in this the President alone was against the interlocutor.

No. 23. 1753, Jan. 17. ELIZABETH M'KENZIE *against* M'KENZIE.

MARTIN and Blackhill were debtors in a bond of L.100 sterling, and sometime after a bond of corroboration was granted by them two and Sir George M'Kenzie of Granville, and he got the debt to pay, and took assignation;—and now his relict, in his right, sues relief against Blackhill, who produced a bond of relief by Martin of the original bond, and insisted on being liable in relief only *pro rata* agreeably to the decisions of Maxwell of Orchardton and Murray of Broughton, and George Lockhart against Lord Semple. Answered, In these cases the new obligant acceded plainly on the faith of the principal debtor. In the first case, Sir Godfrey M'Culloch alone was bound with Murray of Broughton in the corroboration; and in the other Mr Lockhart was alone bound in the

corroboration upon getting a bond of relief from the principal debtor Rosline; but in the case, 10th July 1745, the relict of Mr James Pollock against Sir Robert Pollock, she was found in her husband's right entitled to a total relief of a bond wherein Thomas Pollock was bound as principal and Sir Thomas expressly as cautioner, because in the corroboration only Robert and James were bound, whereby it was presumed that James acceded upon the faith of Sir Robert,—and here it does not appear that Sir George M'Kenzie knew who was principal and who cautioner. The Lords found the pursuer entitled to a total relief against Blackhill. *Renit.* President and Milton. 17th January 1753 *nomine con.* adhered. It seems that both President and Milton had altered;—but as Sir George had taken a bond of relief from Martin alone, we agreed that that would not alter the case.

No. 24. 1752, July 9. SCOTT of Farnish *against* ———.

SCOTT being cautioner in 1724 for ——— in two bonds, got an heritable bond of relief, and was infeft. The lands were afterwards sold, and the price arrested in the purchaser's hands by ——— creditors, and the purchaser raised a multiplepoinding, and called Scott, who thereafter paid the debt in which he was cautioner, and took assignation, which he produced with his infeftment in the lands, and craved preference for the price. Objected, Scott was liberated, and the cautionry prescribed by the septennial prescription provided by the act 1695, and he could not thereafter and after the other creditors' arrestments, and the multiplepoinding, pay to their prejudice. Answered, He was not bound to take the benefit of that prescription. I reported the case for advice, and the Lords unanimously repelled the objection, and sustained the infeftment.

CITATION.

No. 1. 1742, Dec. 10. MAGISTRATES of EDINBURGH *against* CLARKSON.

THE question was, Whether summoning the Magistrates without the Council upon this act of Parliament was sufficient? The Lords found the citation null,—*renit.* Royston, Strichen, Drummore, *et me.* The Court thought that citing Magistrates in common form, meant the same as citing the Burgh in common form. 10th December Altered, six to five and President, which was six to six.

CLAUSE.

No. 1. 1739, July 25. CREDITORS of WILLIAM THOMSON.

SEE Note of No. 22, *voce* ADJUDICATION.