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 unforisfamiliate, 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, *renit.* 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 Lochead, (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

Lees wrote Abbotshaugh, excusing his not having paid the price, and therefore subjoined his bill for the price, including interest from Candlemas, when it became due; but Abbotshaugh did not sign the draft, and died soon after; and now his heir or executor sues Woodhead for the price, and Woodhead's objection to the letter had been before repelled, that the letter was not holograph. But this day we sustained his defence, that no notice had been given that bear was furnished on his letter till November 1738, after Lees was broke, and adjudications against his estate, and we did not regard the circumstance that Woodhead was no merchant, since this was no doubt *in re mercatoria*, and upon that account the letter, though not holograph, had been sustained, and Lees was a merchant. 17th February, The Lords altered, by the President's casting vote. 6th December, Adhered.

No. 4. 1749, July 29. MANSFIELD *against* WEIR.

JOHNSTON, merchant in Edinburgh, being broke, but having a claim against Wardon under submission, which his arbiter thought might produce L.150 sterling, Weir, Johnston's brother-in-law, was persuaded in summer 1744 to apply to Mansfield, and gave him a letter bidding him give credit to Johnston to the extent of L.150 sterling, and he would see him paid. Mansfield gave him on his note L.10, and he immediately opened shop, and Mansfield gave him credit on English merchants, who accordingly furnished him goods, and drew bills at different times, and some of them payable at a great distance of time, and some drawn on Mansfield himself, some on Johnston payable to Mansfield. Johnston broke about Whitsunday 1746, and Mansfield sued Weir to the extent of L.150, whose defence was, want of notice that credit was furnished, or to what extent, or that it was not paid. Answered, This was not an ordinary letter of credit, but a cautionry for an indigent brother who he knew was not able to pay, and as he lived in the same town at least till August 1745, he behoved to know, when he opened shop that the credit was used. My difficulty was, that as he could not know to what extent the credit was used, he could less know that the money was not paid; that merchants carry on trade on credit, and by long forbearance keep their credit and answer their bills with the proceeds. Howsoever, it carried to find Weir liable. Kilkerran, Murkle, and I, did not vote. 23d June Refused, and adhered.

LIFERENTER.

No. 1. 1737, Dec. 8, 21. FERGUSON of Auchinblain *against* HIS SON.

THE Lords, 26th July 1737, found that a liferenter has no right to cut wood.

The Lords varied their interlocutor of 26th July, and found that Auchinblain, in right of his reserved liferent, has right to cut this wood in such time and manner as is agreeable to the custom of the country. 21st December Adhered without answers.