In the process betwixt these parties, on which an interlocutor was pronounced 8th November, two new questions occurred; first, how far the acknowledgment by the wife authorized by the husband binds the husband; 2dly, this being a bond bearing annualrent, whether the husband be liable for the principal? As to the first, we found the acknowledgment of a fact which was proveable by witnesses emitted by a wife authorized by her husband, or which is the same, by their procurator, was probative against the husband. Arniston thought that the husband is not obliged to allow his wife to depone to his prejudice, yet if without objection he allows her to depone, her oath will bind him. As to the other Arniston thought that this was not to be considered as a debt of the wife's bearing annualrent, but as a debt that ought to have been paid out of the first husband's executry before Mrs Cassie's provisions. But what satified me and others was, that Mrs Cassie had in her contract of marriage conveyed to Mr Cassie her whole effects *per universitatem*, which implied the *onus debitorum*, or which is the same thing, it must be *deductis debitis*,—and therefore we found him liable. (24h January 1738.)

No. 10. 1739, Feb. 8. MRS SINCLAIR *against* CREDITORS of CLUNES.

See Note of No. 11. *voce* ARRESTMENT.

No. 11. 1739, Feb. 23. JEAN and MARGARET GRAY *against* DUNLOP.

See Note of No. 9. *voce* HERITABLE AND MOVEABLE.

No. 12. 1739, Nov. 14. CRICHTON L. CROWDIEKNOWS *against* CREDITORS.

THE Lords found, that the additional provision to the Lady was not remuneratory, and therefore reduced the same *in toto* except in so far as payments had been made to her *bona fide* before 1734. The Lords were also of opinion, that where the succession although not *damnosa* was at least doubtful, and the wife abstained and renounced, that the acquisitions by them ought not to be presumed for the wife's behoof;—but as express back-bonds were alleged to have been granted which might affect the question as to other purchases, therefore they granted diligence before answer for recovering these back-bonds but not for proving eases.

No. 13. 1740, Jan. 11. FRASER *against* HODGE.

THE Lords found that courtesy does not extend to the lands conquest by the wife, but only wherein she succeeded to some predecessor agreeably to the uniform opinion of our lawyers ancient and modern, one decision in 1709, and a case not mentioned in the papers, 15th July 1631, Forbes against E. Marshall, (DICT. No. 2. p. 3111) which was not indeed decided, but this was supposed by both parties to be law.

No. 16. 1740, Dec. 5. 1741, Feb. 25. BUCHANAN *against* LADY BARRAFIELD.

IN this question the Lords thought a wife who had an aliment constituted to her by a third party could bind herself personally, so as the debt would affect her and her separate estate after dissolution of the marriage, and that the aliment ceased. I own I was singu-

lar, for I thought that the wife's contractions would be effectual to affect the subject of the aliment, but not the wife herself or her separate estate. But in this I was *solus*. However, several were of opinion that the Lady was not here liable on another ground, that the lands the subject of the aliment were sold before these furnishings. But it carried that she was liable, because they thought the price came in place of the lands, the Lady got none of it, and all was managed by the husband. 13th February, The Lords altered. They thought that an aliment thus constituted to a trustee for the wife and children as a cover for the husband who continued the management, was no sufficient reason for altering the law that a wife cannot bind herself. 25th February Adhered.

No. 17. 1743, Jan. 25. Feb. 18. LAURIE *against* EXECUTORS of HIS WIFE.

BY Laurie's contract of marriage the wife's provisions are declared to be in satisfaction of all that she, her executors, or nearest of kin, could claim by or through the decease of the husband. The wife predeceased, and her executors claimed a third of the moveables. Arniston was clear that the clause extended or was meant to extend to both cases. I thought it was a *questio voluntatis* what the parties intended, and I greatly doubted of extending the clause beyond the words. The President was clear for the pursuer, who carried it by the casting vote of the President. *Pro* were Royston, Drummore, Haining, Strichen, Murkle, *et ego*. *Con.* were Kilkerran, Arniston, Dun, Balmerino, Monzie, Leven. Altered 18th February. Murkle changed, and Haining absent, but Justice-Clerk was for adhering, and Monzie absent. 13th December Adhered.

No. 18. 1743, July 20. M'WHIRTER *against* MILLER.

A MAN'S WIFE died in 1715, leaving a son then about nine years of age, who lived till 1730 or 1731 and died, and some years after the sister of the deceased's wife sued Miller the husband for the wife's third of his moveables. The defence was, that the son of the marriage lived after his mother fifteen or sixteen years, during which the whole moveables pertaining to the father, which were none other than his outsight and insight plenishing; corns and cattle were all charged; that the father as administrator-in-law to his son having disposed of the moveables, was accountable therefor to his son, and which obligation being *in hæreditate* of the son descends to his nearest of kin, and he has bequeathed the same to his father, who is also his nearest of kin. This case was well and full argued for the father by Lord Advocate and Mr Grant, to whom it was recommended by the Court to assist Mr Andrew M'Dowall, and by Mr Charles Erskine and Mr Lockhart for the pursuer, and was the 20th July argued fully on the Bench for two hours,—and at last it came out that the wife died only in 1735, when the son was about 18 or 19 years of age, and the question was put first, Whether a wife's children attaining possession of her third of her husband's moveables needed confirmation to bar the claim of any after nearest of kin? and it carried by a great majority that confirmation was not necessary. The next question was, Whether there was sufficient ground here to presume such possession? and it carried that there was. As to this last my opinion was, that the whole being disposed of during the son's life, he became liable to his son for the value, which was sufficient, and that the father disposing was the same as if the son had disposed. 2d November, Adhered as to the first point.