

## No. 19. 1743, Nov. 29. A. against B.

MINTO reported a case of an executry devolving to a wife; and the husband having served an edict in order to confirm her, she gave in a disclamation;—whereupon the Commissary stopped, and the husband presented an advocacy; which was reported last Friday, and was delayed at my desire to consider of it; and we all agreed, that as the husband had the administration of the wife and her estate, and had himself a *jus mariti* in the executry, she could not be allowed to disclaim without showing cause, and that the husband may use her name. But as the wife is thereby liable to debts, remitted to the Commissaries with instruction to proceed in the confirmation, on the husband finding caution not only in common form, but also to indemnify the wife.

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

THE question was whether a wife could be adduced as witness against her husband, and the Lords sustained the objection, and found she could not. *Pro* were President, Kilkerran, Drummore, Strichen, Haining, Monzie, Murkle. *Con.* were Minto, Arniston, Dun, Balmerino, *et ego*. The President was against the interlocutor. (See No. 24.)

## No. 21. 1744, Feb. 3. BAIRDS against GREIG.

THE like case occurred as was determined 20th July last, M'Whirter (No. 18) but with this difference, that the child had survived her mother only a few months, and that he was only a mere infant;—and we unanimously directed Minto Ordinary, (who reported only for advice on printed representation and answers) to give the same judgment in this case, against the nearest of kin of the wife and in favours of the husband, but only as to *corpora*, leaving parties to be heard as to debts, if any were. Arniston was not with us at the former judgment, but said he heartily approved of it.

## No. 22. 1744, June 20. DUNBAR against CAITHNESS.

THIS question was between a wife and the creditors of her husband about a moveable succession that had devolved to her, and whether any part of it was heritable *quoad* the husband, or how much? The case was perplexed by changes that the executrix (the relict) had made on the subject, by uplifting and applying the moveables, and innovating the only bond bearing annualrent that the defunct had, and by a submission after the executrix's death betwixt her heir and the said wife and her husband discerning for a liquid balance. The Lords went into my opinion (as I thought) that the interest of the wife and husband was to be judged according to the state of the executry at the time of the defunct's death without respect to any of her changes made in it, and as there appeared to have been then heritable debts to the amount of that single bond, therefore they found that the whole free succession devolving to the wife was simply moveable; and therefore adhered to the Ordinary's interlocutor preferring the husband's creditors. 4th July, Adhered.