

HUSBAND AND WIFE.

1776. *January 19.* MILLER *against* BROWN.

WILLIAM Scott was married to Helen Miller. Finding that they could not agree, they executed mutual deeds of separation. The wife renounced all right to aliment, or other provision competent to her by law, as his wife, in the same manner as if she had never been married, and agreed to live separately; and the husband renounced all claim to her effects, *jure mariti*, and gave her full power to dispose of them.

The day preceding her husband's death, hearing of his sickness, Helen Miller was said to have executed a revocation of this renunciation, and she afterwards brought an action against his executor for her *jus relictæ*.

From this action the executor was assoilyed, and to this interlocutor the Lords, 19th January 1776, finally adhered.

The executor argued, that, supposing the renunciation revocable, there was sufficient evidence that the revocation was not executed *stante matrimonio*, but after the husband's death; and, as to this point, it was material to observe, that she was designed, in it, late wife to William Scott; they suspected it of falsehood as to its date. They argued further, that a contract of separation, founded on articles of maltreatment, was irrevocable; and it was alleged, that, in this case, there were articles of maltreatment on the part of the wife, *viz.* lewdness and imperiousness; which would have founded the husband in a process of separation. In the case of *Home against Lady Eccles*, observed in the Dictionary, Vol. I. p. 413; also, 11 *New Coll.* 4th January 1757, *Cramond*; the Lords found, that, although a separation *bona gratia* is ever revocable, a contract of separation, founded on articles of maltreatment, sufficient for a legal separation, is not revocable, and therefore separate aliment was sustained, though above a reasonable aliment such as a Judge would have determined.

The decision in the present case went upon this:—*Primo*, That, by the words of the deed, the *jus relictæ* was comprehended, and was renounced; and, *secundo*, That, even supposing the renunciation revocable, no revocation was executed of it *stante matrimonio*.

1774. *June 23.* CREDITORS of the COUNTESS of CAITHNESS *against* The EARL and COUNTESS of FIFE.

A HUSBAND is liable for his wife's debts contracted before marriage. As to these, should the husband pay them, and even take assignations to them in name of a third party as trustee, neither the husband nor his heirs can revive them in bar of the wife's claims, by her contract of marriage. But nothing seems to hinder why he may not keep them up against the separate estate of the wife, if she any has.

So the Lords thought, in arguing this cause, 23d June 1774; and also in

arguing another cause, 23d January 1777, *Lachlan Duff* against *Countess of Caithness*.

PATERSON *against* TAYLOR.

A WIFE, in consequence of a *prepositura*, may commission; but resting owing cannot be proved by her oath. So Lord Coalston reasoned in the question, *James Paterson, staymaker*, against *William Taylor*. The question was, concerning the price of some pairs of stays commissioned by Mrs Taylor.

1777. August . MARGARET GRAY *against* ELIZABETH HASTIE.

THE case of a wife keeping a tavern, or carrying on any separate branch of business, with her husband's approbation, even suppose he has no connexion with it, is no exception from the general rule that a wife clothed with a husband cannot grant any binding personal obligation. The deeds of the wife in that situation are binding upon the husband, and not upon herself. See Dict. *voce Husband and Wife*; and so Lord Monboddo found in a cause, *Gray against Hastie*, 16th June 1777. To which the Lords adhered, August 1777.

1772. ROBERTSON *against* WATSON.

IN a case observed 111, *New (Faculty) Coll.*, No. 67, the Lords found, that an adjudication of a wife's lands, proceeding on her personal obligation, contained in an heritable bond, granted over said lands, by her and her husband, is null, so far as it adjudges the lands.

They found the same, Winter Session 1772, Robertson against Watson. The Lord Monboddo, Ordinary, had (26th June 1772,) found, "That an heritable bond, granted by a wife *stante matrimonio* with consent of her husband, can be made effectual against her lands by adjudication, if the money is not paid." But the Lords altered, and found, that, as the adjudication was sought to be led on the personal obligation of the wife, no decree could be pronounced.

1777. June 25. EUPHAM LINDSAY, Petitioner.

IN a process of multiplepointing, *Lord Kinnaird* against *Gardens*, &c. Lord Covington, in discussing the merits of a particular interest, found that it gave no title to draw any part of the fund; "In respect that the bond, which is the ground of it, being granted by James Robertson and Magdalen Garden,