

was not *paraphernalia*. 3dly, The Lords found that she could not sell or pledge her *paraphernalia* without her husband's consent. The Lords were divided in their opinion in this last point because of the decision 1711 on one side, and the QUON. ATTACH. Cap. 21. on the other side, and the grounds of law as in the case of minors. I thought that *paraphernalia* of great value ought not to be pledged without consent of the husband, but that things of small value might, as in the case of minors, and that it depended upon the value and circumstances of the parties;—but it carried that they cannot be pledged.

No. 5. 1735, Feb. 1. A. against B.

See Note of No. 1. *voce* HORNING.

No. 6. 1736, Nov. 4. 1737, Feb. 16. MRS SINCLAIR of Brabster against SINCLAIR of Barrack.

THE Lords found the disposition to the defunct by her husband which was in satisfaction is not binding on her executors.—11th January 1737 The Lords altered; to which they adhered 16th February 1737,

No. 7. 1737, Jan. 20. FOSTER against FERGUSON.

THE Lords adhered to the interlocutor finding no *prepositura* to the wife to borrow money, for they thought the lawyer's mistake in constructing the witness's deposition could not bind his client, though they seemed to think if it had been proved that the husband gave his notes or obligations to this very pursuer for money lent, it would have at least bound him to the pursuer.

No. 8. 1737, July 5. CUMING against CUMING.

I REPORTED a case for advice of an impignoration of a gold watch, chain, and hook, part of Mrs Cuming's *paraphernalia*, made by her husband about six months before his death when he was proved to have been in great straits, and so continued till his death, upon a loan of money; Whether the wife's consent ought to be presumed, because of his and his family's circumstances, she not having complained while he lived? The Lords thought in general that the husband's possession of his wife's *paraphernalia* is not sufficient to enable him to dispose of or impignorate them, but in this case because of the circumstances they sustained the impignoration.—July 16, Adhered.

No. 9. 1738, Jan. 24. MARY DICK against MR CASSIE and HIS WIFE.

THE Lords (8th November 1737) found it proved by the contract of marriage and disposition that the bond libelled did then exist, and found that the defender having without order of law or inventory intromitted with the defunct's repositories, it is presumed that she embezzled and abstracted the said bond, and therefore repelled the defence and found the defender liable. 17th November Adhered, and refused a bill without answers.

In the process betwixt these parties, on which an interlocutor was pronounced 9th 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 annual-rent, 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 annual-rent, but as a debt that ought to have been paid out of the first husband's executry before Mrs Cassie's provisions. But what satisfied 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-