fect, any more than a commission of lunacy issued in England, or the probate of a will in the ecclesiastical courts there; but it was agreed to remit the matter back to the Lord Ordinary to be more fully considered of.

1766. *November* 18. ROSS *against* MONRO of NEWMORE.

[*Fac. Coll.* IV. No. 45.]

IN this case the Lords found that an heir of entail, who was obliged to bear the name of the family, under an irritancy, and who had wilfully given up that name and taken another, in order to qualify himself to enjoy another estate, entailed under the condition of bearing a particular name, and that only might be restored against the irritancy incurred, upon his offering at the bar, when the declarator of irritancy is insisted upon, that he was willing to reassume the name he had quitted; *dissent. tantum* Auchinleck, who thought that at this rate he might lay down and take up the name as often as he pleases, and whenever the irritancy was pursued against him he had no more to do but to offer to purge at the bar. And no doubt this would be the consequence if the law be that a conventional irritancy such as this may be purged at the bar as well as a legal irritancy. But I think the decision can only be defended on this principle,—that the Court has exercised its *nobile officium*, and interposed *ex æquitate*, to do, what indeed the Court has never done in any instance before, but which may appear equitable, namely, to forgive the first offence, though wilful and premeditated, without the least pretence of error or mistake. But several of the Lords declared that they would not have the same indulgence for a second offence.

1766. *November* 19. GORDON *against* FARQUHAR.

THE Lords in this case were all of opinion that a personal bond granted by a married woman was not null *ipso jure*, but only *ope exceptionis*, and therefore might be by her homologated.

The bond in this case was a bond of annuity for L.15, and the Lords found that it was homologated to the full extent by the payment only of L.10 sterling for some years. It was referred in this case to the oath of the creditor in the bond, whether she did not grant a deed of restriction of it to L.10 sterling, in case of her marrying a second husband, which accordingly happened. She acknowledged she did so, but she said the debtor in the bond did afterwards agree that the restriction should only take place during her, the debtor's, life, but should not be good to her heir. It carried by a narrow majority, that this was an extrinsic quality in the oath, and the same thing as if a man should acknowledge that he was debtor to another, by bond, in the sum of L.100 sterling, but, says he, the creditor, some time after,