

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,

spouses, to Robert Blyth, was *ab initio* void and null *quoad* the wife, as being granted by her during the coverture."

And, 25th June 1777, the Lords refused a reclaiming petition, without answers, and adhered.

The petition went chiefly on the doctrine laid down in the late treatise by Lord Kames, p. 2; and that any ground of reduction or exception, on account of the coverture, was cut off by the negative prescription,—the bond being much older than 40 years since granted, being dated 22d November 1693, and payable at Martinmas 1694.

1758. July 22. LADY CADBOLL *against* Her HUSBAND.

THE Lords, in the case Lady Cadboll and her husband, found, that, if a husband does not cohabit with his wife, he is bound to aliment her. But, when he again cohabits with her, the separate aliment must cease. That he may prohibit her nearest relations from visiting in his family.

They fixed the *quantum* of the aliment at the provision in the contract of marriage.

HUNTING IN INCLOSURES.

1778. March 3. The MARQUIS of TWEEDDALE *against* JOHN NISBET.

THE Marquis of Tweeddale brought an action against John Nisbet, Esq. and Others, for breaking into his inclosures, destroying his woods, breaking down his fences, &c., by hunting and pursuing game thereon with hounds and horses. Concluding for damages, and to have it declared, that no person has a right to hunt in his inclosures without his leave.

The defenders did not deny the fact; but pleaded, that by law and custom they have a right to follow the chace into inclosed grounds upon refunding any small damage they may occasion; and this they were ready to do.

9th February 1774, the Lord Auchinleck, Ordinary, pronounced this interlocutor:—"In respect, it is alleged, and not denied, that the occasion of the defenders being in the pursuer's inclosures was in actual pursuit of a fox raised without the inclosures, assoilyies, and finds expenses due."

The pursuer represented against this interlocutor, and prayed for a proof of his damages: which the Ordinary, 16th December 1775, allowed. But, in the October preceding, Mr Nisbet having reiterated his offence, *pendente processu*, and as was alleged, with aggravated circumstances, the Marquis applied to the Ordinary for an interdict, which his Lordship, 16th December 1775, re-