

No. 5. 1739, June 22, July 3. FERGUSON *against* JEAN M'GEORGE.

A BOND of 1000 merks payable to a man and his wife and longest liver of the two their heirs and assignees, proceeding on the narrative of the money borrowed from the husband and wife, the wife having survived the husband, was by a pretty great majority found to belong wholly to the wife exclusive of the husband's heirs and nearest of kin ;—and afterwards adhered without answers.—*Vide* Balfour, Title ASSEDATION, Cap. 13.

No. 6. 1740, Nov. 9, 19, 28. CAMPBELL *against* CAMPBELL.

THE Lords found that only the two children viz. the pursuer and defender, who survived their mother, have a title to the subjects left them by Mrs Anderson their grandmother ; and they all agreed that the pursuer's services to the deceased children were all fruitless. Only Arniston spoke and gave his opinion to the above effect, and for the very reason mentioned in what I subjoined to the papers, viz. that here no fee was conveyed, only an obligation to dispoise.—28th November Adhered, and refused a bill without answers.

No. 7. 1741, Feb. 24. JOHN LILLIE (RIDDELL) *against* WALTER RIDDELL.

THE Lords without answers adhered to Drummore's interlocutor, finding that a disposition by a father in his son's contract of marriage of lands to his son in liferent, and the children to be procreated of the marriage in fee, imported a fee to the son, as we found in the case of Frogg.

No. 8. 1747, Feb. 6, Nov. 6. SCOTT of Harden *against* CHRISTIAN RIDDELL.

A BOND of 1200 merks to a man and a wife and longest liver of them in conjunct-fee and liferent, and their heirs, executors, and assignees, *proviso* that notwithstanding the said fee it should be leisome to them to dispose thereof as follows, viz. the fee of 500 merks at the disposal of the said Mr John Nisbet, and the other 700 merks at the disposal of the said Agnes Riddell by their writ under their hand, but that it shall be noways lawful to the said Mr John Nisbet to assign, uplift, and discharge any part of the premises without the advice and consent of the said Agnes Riddell : The wife survived and afterwards died without uplifting or disposing of the money, and her executors sued for payment. Harden pleaded compensation on debts to the extent of 700 or 800 merks, and Drummore sustained the defence for 500 merks from Candlemas 1721 when the debts did coincide, but repelled it as to the rest. Harden reclaimed, and at advising bill and answers, compearance was made for the husband's heirs, who insisted that the husband was fiar and the wife only liferenter with a faculty to dispoise, and not having used it, the word " heirs" meant the husband's heirs, *propter dignitatem*. We took under consideration who was fiar, but thought there was no occasion for an interlocutor on it. Arniston thought, that after the husband's death the wife was fiar, whether *jure accrescendi* or *non decrescendi eodem redit*. Tinwald and I thought as the bond bore receipt of the money from both husband and wife, that, without the other above clauses, was sufficient evidence that there was 700 merks the wife's money, for no man would take the bond so were the whole money his own, and therefore that she was fiar of 700 merks and the husband of

500 merks. I add that suppose the husband fiar of the whole, yet the wife was at least *nominatim* substitute, and her heirs in case of her survivance, agreeably to our judgment 22d June and 3d July 1739, Ferguson against Jean M'George.

No. 9. 1750, June 27. CLAIM, ALEXANDER HAY.

DISMISSED the claim as to the debts, &c. *renitente* Dun. Dismissed it also as to the lands of Coalfield, &c. *renitentibus* Dun, Drummore.

No. 10. 1750, July 18. SIMPSON *against* WORDIE.

By a postnuptial contract between Robert Robertson, younger, and Margaret Simpson, the father of the husband disposed some houses and other heritable subjects to the two spouses in conjunct fee and liferent, and to the children of the marriage in fee, which failing the husband's heirs and assignees; for the which causes the father disposed a tenement in the Canongate and a three 19 years tack of a shop, in the same terms to them two in conjunct fee and liferent, and to the children of the marriage in fee, which failing to the wife's heirs and assignees; and it appeared that the husband had besides got from the two fathers 4000 merks, which he is bound to employ for the children of the marriage, and the wife's father a bond from both the husband and wife for L.50 sterling, (I suppose the half of the computed value of the heritage) payable to another daughter of his, Beatrice. The husband broke, and a sale was pursued of his estate including what was conveyed by the wife's father;—and she prayed those subjects to be struck out of the sale because she was fiar. Sundry precedents were quoted on both sides, and the Lords found that the wife was fiar of the subjects conveyed by her father, and whereof the last termination after the children of the marriage was on her heirs and assignees, and ordered them to be struck out of the sale;—and it had some weight that there appeared to have been a tocher in money, though the several subjects were also disposed in contemplation, &c.

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## FOREIGN.

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No. 1. 1741, Nov. 24. GULLIN *against* HENDLEY.

ONE sued on an English double bond long after 20 years, first pleaded *solvit ad diem*, which imports no more than a presumption after so long time that the debt was paid;—and that being overruled because the creditor lived out of the kingdom, the next defence pleaded was *non est factum*, in order to put the creditor to prove the bond. The Ordinary found this defence not competent after the other had been overruled, and the Lords adhered without a vote. I gave no opinion, because it was a matter of English law, but