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 disponed 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 disponed 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 disponed in contemplation, &c.

FOREIGN.

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

both President and Arniston agreed. The President added a further reason, that a payment was marked on the bond.

*** (The case Morison against Strachan (Gordon) referred under the above case is No. 22. *voce* BANKRUPT, which, in the relative note, is mentioned to have been continued till the following Tuesday. Lord Elchies's note on that day is as follows:)

In January and February 1744 Gordon consigned to Morison stockings, and remitted to him a bill, both which he was directed to apply in payment of a bill of Gordon's due at London. Morison sold the stockings, but the purchaser being his creditor retained the price,—and he discounted or sold the bill, and did not apply it as directed. He broke in March, and in April there went against him a commission of bankruptcy. He surrendered himself and his effects and gave up lists of his debts, and *inter alia* this debt of Gordon's. But Gordon did not claim before the Commissioners, and Morison got the Chancellor's certificate that he had complied with the statute. Gordon sued him in this Court and recovered decreet. Morison came lately to Scotland and was taken with caption at Gordon's instance. He presented a bill of suspension and liberation on the Chancellor's certificate, which with the answers Strichen reported. The Court was divided. Many thought that the certificate would have been of no effect here, even *ex comitate*, but because of the precedents Marshall and Yeaman against Spence, and Christie against Spence, were for a fuller hearing before determining finally, and therefore would have passed the suspension in order to try the question even without caution, but would not pass the liberation without caution at least *judicio sisti*,—and upon the vote it carried to pass upon caution *judicio sisti* when he shall be called for.

FOREIGNER.

No. 1. 1735, June 20. ANDERSON *against* STENTON.

THERE is nothing relative to this case in Lord Elchies's notes. In his Dictionary he refers to the printed papers. They are in the Advocates' Library. Lord Leven had pronounced an interlocutor sustaining the process "in order to affect any effects which the defenders (who resided in Berwick) might have in Scotland." In a petition, drawn by H. Home, afterwards Lord Kames, it was pleaded;—that an action simply for payment of a debt, such as this was, was very different from a forthcoming proceeding on arrestment *juris dictionis fundandæ causa*;—a citation of a native of Scotland residing abroad might properly be given at market cross, pier and shore, but a foreigner could not habilely be so cited,—consequently no decree containing a personal conclusion could be pronounced against him;—the pursuer has condescended on no effects in Scotland, which if he had done or were still to do, they might perhaps be adjudged to him in this process; since although arrestment be generally the first step for preservation to fix the goods within