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