No. 33. 1749, Nov. 24. MRS TOD *against* EARL OF SUTHERLAND.

THE Countess of Sutherland was debtor in an account of millenery goods in January 1742 in L.48 sterling, and afterwards granted a bill payable at Candlemas 1743. A process was brought before me for the principal and annualrent against Earl of Sutherland, and I decerned for principal and annualrent from Candlemas 1743; but upon a reclaiming bill the Lords found no annualrent but from the time that payment was demanded from Earl of Sutherland.

No. 34. 1750, Jan. 16. RIDDELL *against* INGLIS.

A HUSBAND making a settlement to his wife and children, which contained certain provisions in both events of his own and his wife's predecease, he became bound to pay to them certain sums at their majority or marriage, and in the mean time to aliment and educate them. He gave this settlement to his wife, and sometime after she lodged it with a friend for the childrens behoof, and soon after died. The only surviving daughter made a runaway marriage and assigned her provision, who sued the father, and his defence was that the deed was not delivered, and that delivery to his wife was no delivery, her custody and possession was his, and she could not deliver it without his consent; but we found it a delivered evident, *renit. multum* Kilkerran,—3d January 1750. My chief reason was, that the *obligement* in case of the wife's predecease to pay portions in his own life to his children, and in the meantime to aliment and educate, must be intended to be binding on him in his own life, and could not have been given the wife *custodiæ causa* since it was to take effect only in the case of her predecease; and this day we adhered,—16th January.

No. 35. 1750, Dec. 6. LADY LECKIE *against* MOIR of Leckie.

IN this question of separation and aliment brought before us by advocation from the Commissaries, who had found sufficient circumstances and qualifications to infer separation and aliment, and which we first decided 8th June last, and altered the Commissaries judgment, refused the bill, but remitted with instruction to find there was no sufficient cause of separation, but was neglected by me to be then marked;—it was again brought before us by a reclaiming bill for the Lady, and after answers we appointed a hearing and heard the lawyers these three days past, and though when the case was last before us I was against the separation, yet in further considering the case I altered my opinion. I thought that the Lady having on her husband's information been represented to the world as a monster of nature for lasciviousness and a reproach to her sex, and which scandal has by the husband and his counsel in all their writings and pleadings been maintained to be true, though they said it was impossible to prove them,—I thought it impossible that thereafter they could live together as husband and wife, that he could wish to take her again into his bosom, or that she could live with a man who in effect declares that she is unworthy of living, and who had for ever debarred her from the society of every modest woman who would believe him: That though his justification from the imputation of impotency wherewith she is said to have reproached him to one or two of her

confidants, had made excuseable in him to inform his nearest friend of her insatiable appetite, yet he must at the same time have resolved to separate from her, because they could not consistently with the honour of either of them thereafter live together; and whenever matters came to that pass, the Court could not refuse a separation, and he was to aliment her so long as she was his wife; at the same time I saw no necessity for such vindication uor evidence of the truth of what he reproached her with, and far less saw I necessity of propaling that scandal to so many, or maintaining it in courts of justice. Kilkerran also changed his opinion, and upon the question it carried alter the last interlocutor, and to refuse the bill of advocation *simpliciter*. *Pro* were Minto, Drummore, Kilkerran, Justice-Clerk, Murkle, Shewalton, *et me*. *Con*. were Dun, Haining, and President, but Leven was *non liquet*, and Milton in the Outer-House.

No. 36. and 37. 1750, Feb. 13, 1751, Feb. 13. Presbytery of Perth *against* The Magistrates,—and Presbytery of Linlithgow *against* The Magistrates.

This day we adhered to our interlocutor at the instance of Robert M'Intosh as factor for the Presbytery of Perth against the Town for L.10 yearly since 1740 out of the benefice of the third Minister of Perth, being all that time vacant, whereby we sustained the Town's defence that there was no vacancy, that third Minister being now suppressed by the Town. Our first interlocutor was 21st December last, and 13th February we altered an interlocutor we gave against the Town of Linlithgow finding them liable, and found there was no erection, and therefore no vacant stipend.

*** The case No. 38. ought to have been dated 1733. There are particulars in the Notes.

HYPOTHEC.

No. 1. 1735, Feb. 20. Garden of Troup *against* Dr Gregory.

The Lords found that the cautioners had no title to plead the hypothec.—(23d January 1735).

The Lords adhered notwithstanding the rent was paid by the cautioner, in respect the hypothec was not assigned.—(20th February 1735.)

No. 2. 1735, Dec. 4. Creditors of M'Lellan *against* Burns, &c.

The Lords preferred Laurie, and found the journeymen neither had hypothec nor action *de in rem verso*.

No. 3. 1736, Feb. 17. Niel M'Vicar *against* Lady Kirnan.

The Lords altered the interlocutor and sustained Mr M'Vicar's hypothec in the writs against the Lady.—(10th July 1735.)