

which time they are vested in the Crown, because the vesting act cuts off all penalties. *2do*, That no recommendation should be made to the Court of Exchequer for payment, but by the Lords in presence, and *causa cognita. Me referente.*

No. 20.

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1752. November 9.

HENRY LUMSDEN, ANN STEWART, and ROBERT BARRON, CLAIMANTS  
ON THE ESTATE OF TARPERSIE.

No. 21.

CLAIMS on bills dated after 1742, sustained 2d November 1752; but claims on bills after 24th June 1745, rejected,—after a hearing in presence.

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1753. February 9.

FARQUHAR, Claimant.

No. 22.

ELIZABETH FARQUHAR, one of Colonel Farquhar's co-heirs, purchased lands, and the rights were taken to her and Stormont her husband in life-rent, (his life-rent restricted to 500 merks yearly during the existence of children) and to their second son in fee. Stormont was attainted of treason and got a transportation pardon; and an act of Parliament was made to prevent the return of rebels transported. Elizabeth Farquhar claimed the life-rent, and the second son the fee. Answered, During the husband's life the Crown has the possession by his *jus mariti*. Replied, By the law of England the husband's *jus mariti* does not forfeit; *2do*, By that law he has no *jus mariti* in his wife's life-rent, but only where the fee is vested in her; *3tio*, Abjuring the realm, or banishment for life, is in England equal to natural death, and the wife becomes *femme sole*, and has her jointure; (COCKE'S INSTITUTES, vol. 1, p. 133, Weyland's Case. But afterwards the claimant's English counsel gave the two first points against her; and upon the third the Lords sustained the wife's claim; though I observed, that by the law of England all that belonged to the husband was forfeited, and that the law of Scotland was the rule of judging what belonged to the husband; and although in England abjuring the realm had these effects, (which was not peculiar to treason, but held in all felonies, and often without conviction,) yet in Scotland that was not the law, and that of the *jus mariti* is not forfeited when it belongs to the husband; but we sustained the Crown's right to the life-rent after the wife's death.