

## HUSBAND AND WIFE.

1776. January 19. MILLER against BROWN.

WILLIAM Scott was married to Helen Miller. Finding that they could not agree, they executed mutual deeds of separation. The wife renounced all right to aliment, or other provision competent to her by law, as his wife, in the same manner as if she had never been married, and agreed to live separately; and the husband renounced all claim to her effects, *jure mariti*, and gave her full power to dispose of them.

The day preceding her husband's death, hearing of his sickness, Helen Miller was said to have executed a revocation of this renunciation, and she afterwards brought an action against his executor for her *jus relictæ*.

From this action the executor was assoilyed, and to this interlocutor the Lords, 19th January 1776, finally adhered.

The executor argued, that, supposing the renunciation revocable, there was sufficient evidence that the revocation was not executed *stante matrimonio*, but after the husband's death; and, as to this point, it was material to observe, that she was designed, in it, late wife to William Scott; they suspected it of falsehood as to its date. They argued further, that a contract of separation, founded on articles of maltreatment, was irrevocable; and it was alleged, that, in this case, there were articles of maltreatment on the part of the wife, *viz.* lewdness and imperiousness; which would have founded the husband in a process of separation. In the case of *Home against Lady Eccles*, observed in the Dictionary, Vol. I. p. 413; also, 11 *New Coll.* 4th January 1757, *Cramond*; the Lords found, that, although a separation *bona gratia* is ever revocable, a contract of separation, founded on articles of maltreatment, sufficient for a legal separation, is not revocable, and therefore separate aliment was sustained, though above a reasonable aliment such as a Judge would have determined.

The decision in the present case went upon this:—*Primo*, That, by the words of the deed, the *jus relictæ* was comprehended, and was renounced; and, *secundo*, That, even supposing the renunciation revocable, no revocation was executed of it *stante matrimonio*.

1774. June 23. CREDITORS of the COUNTESS of CAITHNESS against The EARL and COUNTESS of FIFE.

A HUSBAND is liable for his wife's debts contracted before marriage. As to these, should the husband pay them, and even take assignations to them in name of a third party as trustee, neither the husband nor his heirs can revive them in bar of the wife's claims, by her contract of marriage. But nothing seems to hinder why he may not keep them up against the separate estate of the wife, if she any has.

So the Lords thought, in arguing this cause, 23d June 1774; and also in