realm by banishment for life by whatever authority it be, and therefore whatever be law as to estates of Englishmen in England, I thought there was no doubt that the *jus mariti* in Scotland continued during the husband's natural life. However, the Court sustained Mrs Stormont's claim *renit. multum* President, Milton, Shewalton, *et me.* Woodhall did not vote. For the interlocutor were Minto, Drummore, Strichen, Dun, Murkle, Kames.—Justice-Clerk in the Outer-House. But without a vote, we found that in case of the husband's surviving, the Crown had right to the liferents provided to him.

No. 23. 1753, July 10. SIR LEWIS M'KENZIE'S CLAIM on CROMARTY.

THIS claimant in 1723 obtained decreet of constitution against the last Earl of Cromarty, for a principal sum and annulrents from 1705, and thereon an adjudication, accumulating the annalrents on the obligement of old Earl George his father,—but there was no penalty. He claimed his accumulated sum and interest from 1723, the date of his adjudication, but Lord Dun, Ordinary, (in respect of a precedent to be after mentioned,) restricted it to the principal and annualrents from 1705, but gave him his necessary expenses. Sir Lewis reclaimed, and at first the Court seemed to think the claim founded in equity, but upon answers reciting a former judgment in a parallel case of Thomas Belshes who in 1733 adjudged the estate of Nairn, we 15th July 1752 gave the like judgment. The Court this day, 10th July, adhered, but it carried only by my casting vote in the chair.—N. B. I had omitted the former decision, being only for advice. The interlocutor was 9th March 1754 altered *nem. con.* The President (who drew the reclaiming bill when at the Bar) was very clear, and at last so seemed Justice-Clerk. I gave no opinion.

No. 24. 1754, Feb. 27. OLIPHANT'S CLAIM on GASK.

BY contract of marriage of Laurence Oliphant the attainted person, he became bound failing heirs-male of the marriage to pay to the daughters, if one, 15,000 merks, if two or more, 25,000 merks at their marriage or age of 16, which should first happen, which they claimed. Answered by Lord Advocate: There is a son of the marriage, and therefore the condition has failed, and the estate being forfeited it can never go to heirs-male. Replied, If the son die before his father, then the provision will become due, and they claim only as conditional creditors in that event. Dismissed the claim. *2do*, Laurence the father in 1731 granted a bond of 9000 merks to James Oliphant his father, which bond the father assigned to the claimant and his sister by assignation of the same date with the bond, but empowering the father to divide it as he pleased, or to give it to any one of his children, and the grandfather was said to have sent this to his daughter-in-law the claimant's mother to keep for the children, and the bond and assignation with the subscriptions to both cancelled now produced with a letter by the grandfather to his daughter-in-law of the same date, that appeared never to have been sealed, recommending to her to preserve the inclosed, without saying what was inclosed: *3tio*, They produced two bonds of provision by Laurence to his two daughters, one to the claimant of 10,000 merks, and the other to her sister of 9000 merks, with a substitution to the claimant of 5000 merks, both dated 17th April 1739, contained a power of revocation and dispensing with the not-delivery; and claimed the first 9000 merks, although the bond was cancelled by their father, which they said he could not lawfully do, and therefore he granted the new bonds, which though they contained a power or faculty to revoke, yet that faculty could not forfeit, and quoted sundry

precedents both in England and Scotland,—but the Lords dismissed both claims. They thought no claim could be sustained upon a cancelled bond and assignation, which for any thing that appeared were cancelled the moment they were signed and never delivered, and whether the forfeiting person had a power to revoke or not, the last bonds of provision could not become debts while they remained in his custody, and even though they had been delivered, yet since they were revokable they were not debts on 24th June 1745 in terms of the vesting act.—(23d July 1752.)

Ebenezer Oliphant being creditor in relief to Gask in several debts, entered his claim on the estate which was sustained. Thereafter the Barons of Exchequer surveyed an heritable bond due to Gask on the estate of Nairn, and he entered a new claim of relief on that subject, which was also of consent sustained (so far as he shall not recover payment out of the other estate,)—but here he claimed other three articles, to which he said he was entitled as cautioner, first the expenses of his former claim, 2*do*, the expense of one of the creditors to whom he was bound of entering his own claim and recovering a decree, and which this claimant said he had paid him; 3*tio*, the dues paid by him in Exchequer in obtaining payment. But we unanimously rejected all the three and dismissed the claim as to them, because they were not debts due by the forfeiting person nor now by the Crown, nor deductions out of the debt, but the claimant's own money,—pretty similar to the question anent the common expenses of ranking and sales, decided in 1738 betwixt the Bank of Scotland and Creditors of Prestonhall, and in 1742 betwixt the said Bank and Fraserdale.

No. 25. 1754, Feb. 28. DUNCAN'S CLAIM on KINLOCH.

ONE Duncan claimed on an accepted bill on Sir James Kinloch the attainted person for L.100 Scots dated 28th August 1745. Objected, That it was after 24th June when the estate was vested in his Majesty. Replied, That it was for the remains of a prior bill for a larger sum dated several years before. Drummore, Ordinary, having allowed a proof, two witnesses deponed that such a prior bill had been assigned to the claimant in spring 1745, and this claimant, and the attainted person, (who is now pardoned) told them that it was transacted, and a bill given for the balance. The case was reported to us, and I had some diffioulty both as to the proof and the point of law, for that here there was really no other evidence than the words of the claimant himself and attainted person, and when they told so the witnesses did not say,—and in point of law no claim could lie for this bill though there might for the former if extant,—and this was raising up a debt of borrowed money by witnesses; and supposing that were legal evidence of the former bill, yet there is still some difficulty, for in the case of York-Buildings Annuitants we altered our first interlocutor, and found that annuitants who were secured upon the estates, but who or their assignees had given up their bonds and taken new bonds, had not the real security due to their first bonds,—and although there was great equity in sustaining every claim of debt contracted *bona fide* before the debtors engaged in the Rebellion, yet that equity could not operate against the statute, unless the claimant was creditor in a debt in law or equity prior to 24th June 1745. The Court sustained the claim *renit.* Strichen, Kilkerran, *et me.*—28th February, We adhered, when also our new