No. 7. 1738, June 29. JEAN BURDEN, &c. *against* DAVID SMITH.

THE Lords found that the wife was a proper creditor to her husband in the half of the 7000 merks and of the conquest, in the events mentioned in the contract, and not an heir substitute, and superseded the other points till June, 19th February 1735.—Affirmed in Parliament.

The Lords would not determine the points depending on their interlocutor of 19th February because of a reclaiming bill yet depending; but unanimously found that the deed by the deceased wife to Smith her husband naming him executor and universal legatar conveyed all rights and debts of her's whether conditional or not. They also found the 8000 merks bond was thereby conveyed, and that it became due by the death of the children before marriage or majority, though the mother Smith's wife died before them, 19th June 1735.—This was reversed in Parliament.

The Lords adhered to the two interlocutors of 19th February and 19th June; but did not determine the point of legitim, nor whether the 7000 merks was testable, 18th July 1735.

The Lords sustained the bond, and thought the father might substitute to the children in their legitim in the event of their dying in non-age, especially that he left them his whole moveables, 13th February 1736.—24th February, The Lords adhered and refused a bill without answers.—This was reversed in Parliament.

No. 8. 1738, July 20. BANNERMAN *against* SIR A. BANNERMAN.

THE Lords repelled the objection against the contract of marriage as to its date, and found the cautioner as well as principal bound in the obligement to re-employ, and adhered to the Ordinary's interlocutor that the tocher is presumed paid. They also found a decreet dative no sufficient proof of William Bannerman's death; but then we had difficulties as to the effect of the obligement to re-employ, Whether there would be place for that obligement if the debt on Marshall's estate was recovered by diligence during the husband's life? or 2dly, If it was so recovered after his death? but as there was no evidence of the fact we remitted to the Ordinary to take evidence of that fact.

No. 10. 1738, Nov. 3. PARKHILL *against* WEIR.

See Note of No. 3. *voce* IMPLIED WILL.

No. 11. 1738, June 9, Dec. 5. KENNEDY, &c. *against* CAMERON.

THE Lords found Mrs Watson not entitled to any aliment out of her tocher, and found D. Cameron bound to stock out the bygone annualrents yet due, upon annualrent, to make up a sum for securing in terms of the contract. 5th December, The last part I am told was altered.