

1650. *January 1.* BALMANNO and CHAPMAN *against* LITTLEJOHNE.

[*See pages 436 and 437.*]

IN the suspension and reduction, Balmanno and Chapman against Littlejohnne, it was farther opposed to the reason, That the woman, deceased before her husband, behoved yet to have an heirship; since, by her contract of marriage, the most part of her moveables were excepted, by express agreement, out of the communion of goods betwixt man and wife, *quæ jurisconsultis et humanitatis studiosis dicuntur bona receptitia*. For clearing thereof, the Lords would have the contract of marriage to be produced.

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1650. *January 1.* LOWRIE *against* MAKCALL and FERGUSONE.

[*See page 447.*]

LOWRIE, pursuing a reduction of infestment against Makcall and Fergusone, upon an irritant clause contained in the infestment, if two terms should run in the third,—the Lords found the clause committed; but, in respect the lands were sold to one Gibsone for the sum of 1600 merks, it was ordained, That Lowrie, superior, should pay to the said Gibsone the foresaid sum; and that the rather, because he was content to take his own land upon that condition.

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1650. *January 2.* FORBES of BALNAGASKE *against* FOULLERTOUNE of KINNABER.

IN the action of Forbes of Balnagaske against Foullertoune of Kinnaber, for registration of a contract of marriage against Foullertoune, as successor *post contractum debitum titulo lucrativo* to his goodsir,—wherein litiscontestation was made, *parte non comparante*,—the Lords not only received the said Foullertoune to propone an exception newly come to his knowledge, and verify the same instantly, (which may be done suppose there were compearance in the act of litiscontestation,) but also to propone any peremptor, and verify the same instantly; as that which was proponed in the process, before he past from his compearance, he not daring to abide by it at that time, but which now he is to avow; to wit, that he cannot be thought successor *titulo lucrativo*, seeing he has his infestment from his uncle, cedent to the pursuer. Now, the exception *noviter perveniens ad notitiam*, was, That the contract of marriage could not be registrate against him, because it was satisfied; and the sum of 4000 merks, thereby provided, was paid to his cedent, in so far as the said cedent, called Gideon, was infest, by the defender's goodsir and his own father, in the lands of Kinnaber and others, redeemable upon 12,000 merks; which was thrice so much as the four contained in the said contract; the which infestment the said Gideon had renounced, being major, *sciens et prudens*, and had granted the receipt of the said 12,000 merks; et nemo presumitur donare quamdiu debet;—L. si quis, 21, pr. ff. de Don. int. Vir. et Uxor. L. rem legatam, 18. De adim. vel transfer. leg. et donari