time of the marriage, unless it were proven: *quo casu* it would be presumed that they were employed to acquire lands after the marriage; and a proportion of lands effeiring thereto would not be considered as conquest during the marriage: And, albeit the pursuer could prove that these sums were otherwise expended, yet it is not without debate, but that lands effeiring thereto ought to be subduced from the conquest; seeing, had not these sums been so employed, others with which the conquest was made might have been expended upon the occasion; and, money being a fungible, we are to consider the species on't, whether it be the individual money that belonged to the husband before the marriage, or not; but it is equally reasonable that the estate, before the marriage, be made up, which perhaps may be liable to the like obligement of conquest of the first marriage, as that debt due by the husband before the second marriage should be paid out of the conquest during the marriage, where there is no preceding estate; and if there be an estate, it is reasonable the debt be deduced out of it. *Vide* No. 352, [Laird of Niddery against his Brother James, February 1683;] and No. 391, [Frazer against Frazer, 6th December 1687.]

*Page* 85, No. 349.

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1683. *February.* GRANT of KIRDELLS *against* BIRKENBURN.

GRANT of Kirdells, [mentioned *supra*, No. 131, Grant of Kirdells against Birkenburn, 8th December 1682,] having insisted that the defender should count for 7000 merks, as the price of lands contained in the disposition, and the value of the lands being proven not to exceed 6000 merks;—the Lords found that the defender, as a conjunct person, needed to hold count for that sum only; and, *quoad ultra*, was in the case of a stranger, the disposition bearing the receipt of the whole 7000 merks.

*Page* 27, No. 133, [1st.]

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1683. *February.* BONNAR *against* WILLIAM ARNOT.

A FATHER having assigned a bond to his wife in liferent, and to their daughter, and the heirs of her body in fee; which failing, the one half of the fee to the wife, and the other half to his own brother:—by a distinct clause, in case the daughter died without bairns, the father, *per verba de presenti*, disponed the money to his wife and to his brother, by equal portions. The daughter having chosen a curator, left the sum to him in legacy at her death; which was questioned by her uncle, because she could not disappoint, by her testament, the conditional assignation in the last clause, which existed. Answered, The testator, being fiar by the conception of the assignation, she might dispose of the sum, although, by the last clause, the mother and uncle might have succeeded thereto, *ab intestato*, without a service. Replied, The testator could only have spent it, or disposed on't for onerous causes; and 'tis usual for parents, in bonds of provision to their children, to adject a quality, that the money should return, in case of their decease before such an age, or unmarried; which bonds the Lords have often found, particularly in the case of the children of Laureston, could not be assigned without an onerous cause. The Lords sustained the legacy left by the daughter, February 1683. But the contrary was afterwards determined