

ground, that she was provided to the liferent of that sum ; and craves 1200 merks yearly. Compearance is made for Breistmiln, who alleged, he had a process depending to affect that remainder of the price, and he would suffer none to touch it till his claim was paid. *2do*, Whatever pretence James Murray had, she is not *in pari casu* ; for, being remarried to a second husband, he is, *jure naturæ*, bound to aliment his wife, and not burden her first husband's creditors therewith.

ANSWERED,—That it were against all equity for the General's heirs to bruik the estate, retain a great part of the price, and not pay its interest to the seller's relict provided thereto, who, albeit married, yet has no other fund to support herself and bairns but this annualrent. And though the General, conform to the custom of purchasers, used the precaution of retaining a part of the price to obviate any latent incumbrances that might emerge, and though Breistmiln's be marked amongst others, yet it has not so much as the shadow of a right ; and has lingered these many years ; and is prescribed *non utendo* ; and never was clothed with infestment ; and can never prevail, much less stop so favourable an aliment.

REPLIED,—They'll find themselves mightily mistaken about the quality of his right ; for he not only has an apprising, but likewise an inhibition long prior to the General's purchase ; and his process is so far advanced that there is an act pronounced in it, and her aliment must attend the event of his cause. And it is singular confidence to assert he can never prevail ; the rights by which they would exclude him not being yet produced, and which are really paid by the price, or extinguished by the apparent heir's intromissions ; and, because of thir defects, are wilfully kept up.

The Lords finding the probability of a claim in Breistmiln's person, they thought it hard to exhaust his fund of payment by aliments. But, in regard it was suggested, that his claim would fall much short of the 27,000 merks retained, and would not come to the half of it, though he prevailed, so that there might be room for a modification of some part of the annualrents to the poor woman ; therefore they remitted to my Lord Minto, Ordinary in the cause, to try the extent of Breistmiln's debt, and how far it might subsist ; and, if it were within the sum retained, to calculate what superplus might be left behind, out of which the pursuer might get an aliment modified to her.

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1711 and 1712. THE LADY ORMISTON OF WHITLAW, and COCKBURN of ORMISTON, Lord Justice Clerk, now her husband, *against* J. HAMILTON of BANGOUR and his TUTORS.

1711. *July 3.*—THE Lady Ormiston gave in an appeal and protest for re-  
meid of law to the British Parliament, against J. Hamilton of Bangour and his  
Tutors, complaining of several interlocutors pronounced against her, in her pro-  
cess for payment of the £7000 sterling bond, granted to her by the deceased  
Lord Whitlaw, her former husband: and particularly one given on the 29th of  
June last, finding she could not insist for her claim of the funeral charges in

that process, because that *lis erat finita* by extracting her decret ; which she ALLEGED was but partial. But the Lords had found otherwise.

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*December 8.*—The Lady Ormiston and her husband gave in a second appeal to the British Parliament against John Hamilton of Bangour and his Tutors, reclaiming against a late interlocutor of the Lords, whereby they modified £3000 Scots to be retained by Bangour, as heir, out of the first and readiest of the heritage ; with this quality, that if, *in eventu*, my Lord Whitlaw's heritable estate should not be solvendo for all his debts and obligations, then the Lords would consider how far they would diminish this temporary modification. For Ormiston had consented to allow the expenses he had wared out in serving himself heir *cum beneficio*, and in making up the inventory ; but objected against the farther account given in of 3 or £4000 expended in defending thir processes against her. Which the Lady Ormiston contended was so far from tending to the preservation of the heritage, that it is a plain destruction and dissipation thereof.

Bangour, on the contrary, ALLEGED,—That he had cast out sundry of her claims, and restricted others ; which shows he was neither calumnious nor litigious.

*Vol. II. Page 685.*

*1712. February 5.*—The Lady Ormiston and her husband brought down a warrant from the House of Peers against J. Hamilton of Bangour, for introducing their appeal into the house, (*de quo supra*, 8th December 1711 ; ) but it had this more in it than the former, that it was executed against the clerks of session, who scrupled to give him a full extract of the process, as being discharged by the Lords. But rather than underlie the censure of the Peers, they gave out the extract as demanded ; and left Bangour to remeid himself only by a protest in the contrary.

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*July 30.*—The Lady Ormiston gave in a protest for remeid of law against Hamilton of Bangour, because the Lords had found the value of the liferent of the house behoved to deduce off her £7000 sterling bond, *quia debitor non presumitur donare* ; and had found the Peers' judgment and decree did not concern the prescription ; and that all the accounts of the funeral charges were prescribed, where she was not contractor and employer ; and that the executrix's assignation to her gave her no right to the expenses of confirmation so as to affect the executry.

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[See the numerous other parts of the Report of this Case, pointed out in the Index to the Decisions.]

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*1712. February 7.* ELEISES, Daughters to deceased Mr James Eleis of Stanhop-Milns, against MR JAMES WATSON of SAUGHTON.

MR James having sold his lands of Saughton to Watson's father for 34,000 merks, for which he gave bond, and 13,000 merks being paid to some pressing creditors ; after counting, there was a new bond given for £14,000 Scots, as the