

her case was a provision in a contract of marriage, which was both rational and onerous; and the pursuer did not plead, that the defunct, as apparent heir three years in possession, could make a valid conveyance or settlement of the estate, but only contended, that the obligation by him in his contract of marriage, providing the lands to the heirs-female of the marriage, was effectual, by the act 1695, to compel the defender, as heir in the investiture, to deduce in favours of the pursuer.

THE LORDS found, That by the contract of marriage *in anno* 1697, the destination was altered in favours of heirs whatsoever; and in regard that John, though not infeft, was three years in possession of the estate, found the obligation in the contract of marriage binding on the heirs-male. See No 66. p. 8955, *voce* MINOR.

Reporter, *Lord Kimmergham*  
Clerk, *Gibson.*

Act. *Ja. Fergusson, sen.*

Act. *Ja. Graham, sen.*

*Edgar, p. 28.*

No 137.

1726. *January 26.* Marquis of CLYDESDALE *against* Earl of DUNDONALD.

ONE passing by an apparent heir three years in possession, and serving to a remoter predecessor, is not bound to fulfil the gratuitous debts and deeds of the apparent heir, and has relief of what debts he pays of the apparent heir' against the apparent heir's representatives in any separate estate.

*Fol. Dic. v. 2. p. 40. Rem. Dec.*

No 138.

\*.\* This case is No 3. p. 1274.; *voce* BASE INFESTMENT.

\*.\* A similar decision was pronounced February 1727, Mitchell against Wilson.  
*See APPENDIX.*

1729. *January.* Lord HALKERTON *against* DRUMMOND.

AN apparent heir three years in possession of an infeftment of annualrent, having uplifted the same, and granted discharge and assignation, it was found that another apparent heir, passing him by, and serving in the annualrent to a remoter predecessor, could not quarrel the said discharge and assignation. See APPENDIX.

*Fol. Dic. v. 2. p. 39.*

No 139.

1733. *December 19.* JOHNSTON *against* STEIL.

THE defunct's estate, in which he died infeft, being a wadset holding base of the reverser, in which there was a back-tack continuing the reverser in pos-

No 140.