

1737. *January 7.* JEAN TRAIL *against* JOHN TRAIL of Elseness.

No. 5.

THE estate of Elseness was by John Trail's contract of marriage provided to the heirs whatsoever to be procreated of the marriage; and thereafter he disposed it to his eldest son Patrick and the heirs-male of his body, whom failing, to his second son David and the heirs-male of his body, whom failing, to the other heirs-male to be procreated of the said John the father, whom failing, to the eldest heir-female to be procreated of Patrick's body, &c.; and Patrick dying without sons, his daughter claimed the estate on the contract of marriage against the second son David's son. Lord Newhall found the contract of marriage sufficiently implemented by the above disposition, though preferring the heirs-male to the heirs-female;—and the Lords adhered.

1737. *July 13.* CHRISTIAN STENHOUSE *against* JEAN YOUNG.

No. 6.

A HUSBAND obliging himself in his contract of marriage to secure 6000 merks to himself and spouse in conjunct-fee and liferent, and to the heirs and bairns of the marriage in fee, and providing also the conquest to the heirs of the marriage, the husband purchased some houses and took the rights to heirs whatsoever, and in one of his daughters contract of marriage gave with her in tocher 2000 merks, which he secured by wadset on one of these houses; and having died, having only that daughter and another; the Lords found the two daughters creditors by the contract in 6000 merks; that the 2000 merks must impute *pro tanto* in that daughter's half, whereby she is creditor in 1000 merks more, and the other daughter in 3000 merks; that the defunct's free estate must be applied first in payment of these sums, and the remainder divides equally betwixt the two daughters.

1738. *June 29.*

JEAN BURDEN and HER HUSBAND *against* DAVID SMITH.

No. 7.

CONTRACT of marriage, providing 7000 merks to the wife in liferent and to the children in fee, and the conquest, the half to her in liferent, and the whole to the children in fee; but in case of no children surviving him,