

1738. December 5. KENNEDY, &c. against CAMERON.

No. 11.

In the above case betwixt Kennedy, &c. and Cameron, (No. 1.) the Lords 9th June 1738, found Doctor Cameron obliged to stock out such of the by gone annualrents of the tocher as are yet due, to make up the principal sum that Mr Watson was by the contract obliged to secure, in the terms thereof, though the prestations on Watson's part be not performed; and found his wife entitled to no aliment during the standing of the marriage out of the tocher. But upon a reclaiming bill, they found that no action for implement of Mr Cameron's part of the contract does lie, till the counter part be implemented.

1739. February —.

MARQUIS of ANNANDALE against The EARL of HOPETOUN.

No. 12.

By contract betwixt the Marquis of Annandale and Countess of Hoptoun, she yielded to him Craigiehall, rated at L.450 sterling, and discharged him of bygoness; but if the Marquis's second son should succeed to Craigiehall, these interim rents at L.450 *per annum* were to be repaid the Countess. *2dly*, If any other heir not of the Marquis's body besides the Countess should succeed to the estate of Annandale, such heir to repay the interim rents of L.450 and L.1250 more, or in the Countess's option a sum equal to the half of the interim rents more. The Countess (who was also executrix to her brother) pursued Marquis George as representing Marquis John, particularly, by passing him by and serving heir to his father Marquis William, after having got certification against the procuratory on which Marquis James's infestment proceeded, (*vide inter eosdem voce* PRESCRIPTION, 25th June 1735,) and being assoilzied from a proving of the tenor of it by the House of Lords. The Lords in this new process, *1mo*, Found the contract onerous. *2do*, Marquis James having been infest, and his infestment often homologated and acknowledged by his father Marquis William the granter of the procuratory, they found, that notwithstanding the decree of the House of Lords and certification here, the onerous debt of Marquis James may affect the estate of Annandale. But found *3tio*, That in so far as this present Marquis is found liable on the act 1695 he has relief against the other estate of the last Marquis, 22d June 1736, 6th July 1737, and 31st January 1738; when they also found that in so far as the Marquis is liable on account of the last Marquis's infestment, he has no relief against the executry and separate estate. But upon appeal, the

House of Lords found the contract onerous as to the interim rents of L.450, and the Marquis liable for them. They affirmed the interlocutor, that onerous debts of Marquis James may affect the estate of Annandale, but found the Marquis had no relief against the executry or separate estate, neither as liable on the act 1695, nor on the last Marquis's infestment, since the last Marquis burdened expressly the heir with it.

No. 12.

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1739. December 19. JAMES RUSSEL against GORDON.

A FATHER having settled the terms of his son's marriage-articles, but forgot to provide for his younger children, though he was to give his son all his estate, wrote to his correspondent and to his son before the contract, that he behoved to secure them in L.20,000 Scots, but seemed afraid to make it known to the bride's friends, lest they should be startled, and therefore it was not told them; but the son having agreed, the contract was signed in terms of the first proposals, and some days after the son granted his bond to the younger children *nominatim*, payable after his father's death for such shares of the L.20,000 as the father should appoint to each, at least so much thereof as should not be paid by the father in his own life, or by what should be left or fell to them at his death; but some time after the father gave up this obligation to the son after one of the children had privately registrated it in the register of probative writs. The Lords found the transaction *contra fidem tabularum*, and therefore not effectual even against the son during the existence of the wife and children. *2dly*, That there was no *jus quæsitum* by it to the children, and that the father might give it up. *Vide* Hamilton against Hamilton, *voce* PROVISION TO HEIRS AND CHILDREN.

No. 13.

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1739. December 21.

CAPTAIN CHARLES and MARY CAMPBELL against ELIZABETH CAMPBELL.

THE Lords found that Colonel James Campbell being bound by his contract of marriage to secure 40,000 merks, and the whole conquest to himself and his spouse in conjunct-fee and liferent, and to the bairns of the marriage in fee, that each of the children are entitled to a share of the said special sum and conquest, and that the Colonel's taking his whole land-

No. 14.