

The Lords, (6th November 1740) altered the interlocutor of 6th November last, and found that no part of the obligation by the father to the son for 2000 merks being provided to the issue of the marriage, the obligation does not resolve by the dissolution of the marriage within year and day. *Pro* were Royston, Milton, Minto, Arniston, Murkle. *Con.* were Drummore, Kilkerran, Dun, Balmerino, *et ego*,—and so it carried by the President's casting vote. 9th June 1742, The Lords Adhered.

No. 19. 1742, Feb. 8. ROBERTSON *against* MRS JEAN KERR.

See Note of No. 6, *voce* LEGITIM.

No. 20. 1743, June 4, 8. HEIRS of STEWART of Phisgil, *Competing*.

JUSTICE-CLERK seemed to think the exclusion of Agnes Stewart in the tailzie 1719 had no effect by the law of Scotland; but all the rest that spoke, particularly Arniston, thought that where there was a destination of succession to heir-male or heir-of-line with an exclusion of a particular person, that was a virtual institution of the next. Arniston observed in this case, that as to the wife's estate, there was no obligation upon the husband, but a conveyance and destination by the wife, by which the husband was made *fiar*; and the question was, Whether he had powers to alter the destination?—that he could not alter so as to prefer strangers, and doubted much whether he could even prefer the heirs-male of the marriage to the heirs-of-line. Kilkerran thought that *quoad* the conquest he had power;—but without putting a question, we found that Phisgil could not prefer his own daughters to his son's daughters, and therefore reduced, 4th January 1743.—8th June, The Lords *nem. con.* adhered, but with a further addition of finding the entail inconsistent with and *in fraudum tabularum*; which we did at the pursuer's motion.

No. 21. 1744, Jan. 13, 31. MISS MURRAY and CREDITORS OF MR MURRAY.

See Note of No. 13, *voce* EXECUTOR.

No. 22. 1744, Dec. 11. CREDITORS OF MR MURRAY *against* GRAHAM.

See Note of No. 6, *voce* LOCUS PÆNITENTIÆ.

No. 23. 1745, Feb. 19. MRS FRANCES KERR *against* JOHN YOUNG.

See Note of No. 14, *voce* LEGACY.

No. 24. 1747, June 30. BEATSON of Killrie *against* MARGARET BEATSON, &c.

A BOND of provision by a brother to his sister, payable at her marriage, *proviso* that if she should have no children, the fee of the principal sum shall fall, accresce, and pertain to the granter and his heirs; and she having assigned the bond to her husband in consideration of the settlements by him on her; both of them charged the brother, who