

No. 5. 1748, Dec. 1. HAMILTON *against* LINNEN.

HAMILTON having after many attempts and long courtship debauched Linnen his cousin-german and got her with child, the Commissaries decerned him in L.500 damages; and an advocacy being reported to us, the Lords found damages due, *renit.* President and Drummore, but restricted the sum to L.200 sterling besides expenses of process. We all agreed to restrict, because he was only presumptive heir to an estate, his father living. The question put was L.200 or L.300, and it carried by the President's casting vote L.200—*referente* Kilkerran.

No. 6. 1750, June 19. HAMILTON *against* ARBUTHNOT.

ARBUTHNOT having said to several customers that Mr Hamilton's goods were mildewed and rotten to spoil the sale of his goods; Hamilton sued him before the Bailies of Edinburgh and recovered decret for L.40 sterling. A bill of suspension being offered they first insisted on the incompetency of the Bailie-Court, because this was a scandal and only competent to the Commissaries. But we thought there was nothing in the objection where it was a real injury affecting the pursuer's fortune and estate and concluding damages, though it was only in words; and we agreed that there was sufficient cause for the process, and we only differed as to the quantity of damages, whether L.20 or L.40, but on a vote it carried by the narrowest majority to refuse the bill *in toto*.

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 RETOUR.
 

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## No. 1. 1738, Jan. 17. CASE OF BARGENY.

See Note of No. 2, *voce* PROVISION TO HEIRS AND CHILDREN.

\* \* A complete collection of the Session papers of this very important case has been preserved by Lord Elchies. They are in the 11th volume, in the Advocates Library. The papers of the case of Kinfauns are in the same volume.

No. 2. 1743, June 17. HENRY BETHUNE, *Supplicant*.

MR BETHUNE having right as heir to his brother David to the barony of Balfour, and also to the lands of Kilrennie, and annualrents contained in a charter in 1715 in favours of his cousin James Bethune, by which charter there was a dispensation for taking infeftment at the manor place of Kilrennie or any other of the lands therein contained for the whole lands in that charter; but in the special service of the petitioner, by an error of the clerk, in place of the manor place of Kilrennie he called it the manor place of Balfour, and the

precept went out of the Chancery in terms thereof, and the sasine given at the place of Balfour. Now Mr Bethune prays the Court to supply this defect, and to order the Director of the Chancery to issue new precepts, which I reported, and the Lords would not amend the retour, that is, would not order precepts to be issued, containing the dispensation for taking infeftment at the house of Kilrennie, because that was not in the retour. But as that dispensation did not hinder the taking infeftments on the ground of the several tenants, therefore we granted warrant to issue precepts with that quality, that the precepts direct the Sheriffs to give infeftment on the grounds of all the several lands.

No. 3. 1753, July 13. MISS K. MAITLAND *against* MAJOR A. FORBES.

IN 1700 Sir Charles Maitland of Pittrichie executed a procuratory of resignation for resigning the estate in favours of his son Charles and heirs-male of his body, and the heirs-male of their bodies, which failing to the other heirs-male to be procreate of his own body and heirs-male of their bodies, which failing to the heir-female to be procreate of his sons body and heirs-male of their bodies, the eldest daughter or heir-female always succeeding without division, which failing to Jean Maitland and heirs-male to be procreate of her body, which failing to Mary his second daughter and heirs male of her body, and then to the rest of his daughters and heirs-male of their bodies *seriatim*, which failing to his heirs-male whatsoever, and heirs-male of their bodies, which failing to his own nearest heirs and assignees whatsoever; but reserving powers to himself equal to a property, *proviso* that if the succession should devolve to daughters or heirs-female, the eldest daughter or heir-female should succeed without division and marry a gentleman of the name of Maitland and bear the arms of Pittrichie; or if they married a gentleman of another name, that the said heirs-female and their husbands and their heirs should assume the name of Maitland and bear the arms of Pittrichie, and in case of contravention the said heirs-female and their husbands, and the heirs of their bodies, shall amit all right to the said estate, &c. *proviso* also that it shall not be lawful to any of the daughters or heirs-female who shall happen to succeed to sell, annailzie, or dispone the same or any part thereof, nor to wadset or impignorate the same, nor to burden or affect the same with any sum of money, above the sum of 20,000 merks, and if once burdened with that sum, the subsequent heirs-female are to have no power to burden the same with any more, and if the estate shall be adjudged for the said 20000 merks, the said heirs who are then in possession of the estate shall be obliged to redeem the same two years before expiration of the legal, and an irritancy was added in case of contravention. Sir Charles the father died and was succeeded by Sir Charles the son, (who married the Lady afterwards married to Pittodrie) and in 1703 he ratified the former tailzie and added more lands, and in 1703 expedite a charter on his father's and his own procuratories, but died before infeftment taken on it, and was succeeded by his sister Jean, (who was married to Mr Alexander Arbuthnot, afterwards Baron Maitland) and she expedite a general service as heir of tailzie to her brother, the retour bearing, " Quod quondam dominus Carolus Maitland de Pittrichie frater germanus magistri Joannis Maitland, filii natu maximi mortui domini Caroli Maitland de Pittrichie melitis Baronetti Obiit, &c. ; et quod dicta magistra Joanna Maitland est legitima et propinquior hæres talliæ dicti quondam domini Caroli Maitland