

promised that he would not exact the money, or part of it; *dissent*. Auchinleck and Kaimes.

*N.B.* This was afterwards altered, and the quality found intrinsic.

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1766. *November 20.* CAMPBELL *against* M'NEILL.

IN this case the Lords found, that a man bound, by his contract of marriage, to give his estate to his eldest son, could not give such additional provisions to his wife and children as would have obliged the heir to sell the estate, although by doing so he might have raised a sum of money which would have paid the additional provisions, and afforded a considerable reversion to the heir; *dissent. tantum* Pit-four.

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1766. *December 19.* WEMYSS *against* HIS MAJESTY'S ADVOCATE.

THIS was a question about the interruption of the prescription of a bond due by the Earl of Cromarty, who was forfeited for his accession to the rebellion in 1745.

This bond was not made a claim upon the Earl's forfeiture, in terms of the vesting Act; but afterwards, and as late as this year, 1766, a new subject of the Earl's was surveyed, *viz.*—The money given for the heritable jurisdiction belonging to the Earl, and a claim for this bond was entered in due time after this second survey. The fact was, that, at the time of the forfeiture, and when the estate was vested in the Crown, the prescription was not run, but it was run before the first survey was made in the year 1749.

The Lords were unanimously of opinion, that till the forfeited estate is surveyed, the creditor not being *valens agere*, the course of the prescription must stop, as in the case of minority; and that, therefore, in this case the prescription stood still from the time the Earl's estate was vested in the Crown till the survey; that the claimant, by not entering his claim within six months after the first survey, was barred from claiming payment out of the subjects then surveyed; but that, with respect to the subjects not then surveyed, the prescription stood still, so that the whole time, from the estate being vested till the second survey, was to be deducted from the prescription. This appears to me to be a very new decision in point of prescription, as it makes a different prescription for every different subject which the debtor may be possessed of; for here, with respect to the lands there was one prescription, and with respect to the jurisdiction money there was another, and till these subjects were discovered and surveyed, the prescription did not run with respect to them. It was therefore the same case as if there had been two debtors in this bond,—the one possessed of the lands, the other of the jurisdiction. The prescription, with respect to the one debtor possessed of the lands, would run only from the time of the survey of the lands, and the prescription with respect