

No 21.

THE LORDS declared, That by the contract of marriage, with the charter and sasine following thereon, Mr James was fiar. *Vide* 29th November 1705, *inter eosdem, voce* REGISTRATION.

*Forbes, p. 42.*

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S E C T. III.

Where the Wife's Heirs last in the Institution.

1612. *July 24.*

No 22.

JAMES RAMSAY of Cockpen *against* JOHN MAXWELL of Conkaith.

FOUND, That the heritable right is not ruled by the last termination, but that it pertains to the heir of the first fiar. This found in an infestment taken by Nicol Ramsay of Cockpen, and Elizabeth Rigg his spouse, in conjunct-fee, and to the heirs betwixt them; which failing, to the heirs of his own body; which failing, to the said Elizabeth, and the heirs of her whatsoever.

*Fol. Dic. v. 1. p. 299. Kerse, MS. fol. 68.*

1639. *January 29.* GRAHAM *against* PARK and GAIRDEN.

No 23.

The wife's tocher in a contract of marriage, was ordained to be paid to the husband and wife in conjunct-fee, and to their children heritably, and failing of heirs betwixt them, to the wife's heirs. There being heirs of the marriage, it was found, that the property of the sum provided be-

By contract of marriage betwixt one Park, daughter to another Park burghess of Edinburgh, and William Gairden her future spouse, the said Park, father to the woman contracted in marriage, is obliged to pay to the said Gairden the sum of 5000 merks in tocher, to which sum the said future husband obliged him to add other 5000 merks of his own money; which whole sum, the husband is obliged by the contract to employ upon land or annualrent to himself, and his said future spouse in conjunct-fee, and to the heirs gotten betwixt them; which failing, the one half to the heirs of the husband, and the other half to the heirs of the wife; according whereto, after the marriage, the father to the wife, having the said 5000 merks promitted in tocher, the same was lent to John Rind, merchant burghess of Edinburgh, who by his obligation was obliged to pay that sum to the said husband, and to the wife, and to their heirs; and failing of them, to the wife's heirs, conform to the contract. This sum being thereafter comprised by one Graham an Englishman, for a debt owing to him by the said Gairden, husband to the wife; and upon this comprising pursuit being moved