

have done had his daughter's liferent or the childrens provisions been to be thereby affected. It was indeed said, that it might be a question, Whether such a deed would be effectual against the husband himself, should the marriage dissolve by the death of the wife without children? But as that was not the case at present, there was no occasion to give judgment upon it; mean time, with respect to that point, a distinction may seem not improper, that if it was an imposition by the father upon his son, who being once engaged in affection to the bride, would rather comply with any terms than be disappointed of the marriage, even the son might in that case reduce as he might on any other ground of concussion; but if the case should appear to be not a concussion upon the son, but which often happens, a fraudulent contrivance between father and son, to deceive the bride and her friends, the case might receive a different consideration.

N. B. There is a petition against this interlocutor not advised; but as it is only laid upon the point of fact, without controverting the relevancy, this is a judgment on the point of law.

Fol. Dic. v. 2. p. 22. Kilkerran, (PACTUM ILLICITUM.) No 1. p. 361.

1740. December 23.

LUNDIN against LAW.

FOUND, That the exception against a deed as *contra fidem tabularum nuptialium* was perpetual, and therefore competent even after the lapse of forty years, where the prescription of the claim itself had been interrupted by minority.

Fol. Dic. v. 4. p. 30. Kilkerran, (PACTUM ILLICITUM.) No 2. p. 363.

S E C T. VII.

Pactum super hæreditate viventis.

1630. July 6.

AIKENHEAD against BOTHWELL.

THE LORDS found it not unlawful to Mr James Aikenhead to sell to his brother, Mr Adam Bothwell, all the gear that his wife should happen to fall by the decease of Adam Bothwell her father, notwithstanding of the civil law alleged *quod pactum sit illicitum de successione viventis*.

Fol. Dic. v. 2. p. 23. Auchinleek, MS. p. 21.

No 34.

No 35.

No 36.

No 36.

** Durie reports this case :

ADAM BOTHWELL being obliged, in the contract of marriage betwixt Mr James Aikēhead and his daughter, to make her a bairn of his house at the time of his decease, diverse years after there is a contract made betwixt the eldest son of the said Adam Bothwell, brother-in-law to the said Mr James, and the said Mr James, whereby the said Mr James disposes that clause of the said contract, and all benefit which he might have thereby, or by the decease of his said father-in-law, to his said good-brother, who is obliged therefore, by his particular bond, to pay Mr James 8000 merks, at the first term after his father's decease; which bond being desired to be reduced at the instance of the said Adam Bothwell's son, upon this reason, because it was *pactum contra bonos mores factum super hereditate viventis*, which is forbidden in law, for thereby the good-son sells his partage of the goods, which he may succeed to, or fall to him, by his father-in-law's decease: This reason was not sustained, but an absolvitor was given therefrom, because the civil law in this case (albeit also it receive diverse constructions and limitations, as if such pactions be made, *consentiente eo, de cujus hereditate paciscuntur, tunc pacta sic facta tenent*, and sundry others) has no place, according to the laws of Scotland, as in tailzies and renunciations of the bairns' part of gear, and others; and this was a disposition of that which was provided by the father-in-law to his good-son, in his contract of marriage, which might be in law disposed upon by him, in whose favours it was conceived.

Act. *Advocatus & Morat.*Alt. *Nicolson & Stuart.*Clerk, *Gibson.**Durie, p. 525.*

1708. July 15.

RAGG against BROWN.

No 37.

A disposition by a remoter heir, conveying to the disponent his hope of succession to an estate, when the nearest heir was yet, and many years thereafter, alive, was sustained, though it was alleged to be *pactum corvini de hereditate viventis*.

JOHN WILLIAMSON, sheriff-clerk of Perth, and his posterity, being deceased, Alexander Ragg, whipmaker in London, being the said Williamson's sister's son, takes brieves out of the Chancery for serving himself heir to his uncle in the lands of Barnhill, and a house in Perth. Isobel Brown, relict of Borthwick of Hadside, *alleging*, she is descended of the said John's uncle's daughter, raises advocacy of Ragg's brieves, on this reason, that, though your relation seem nearer than mine, yet I must be preferred, because I offer to prove, that Ragg, your father, being one of Oliver Cromwell's soldiers here in Scotland, during the usurpation, pretended to marry Margaret Williamson, sister to the said John, of which you was born, and yet had a wife then living in England, and was censured for taking two wives in one of their military judicatures they had at that time, and so you being an adulterous bastard, I, as