

the half,—I have right by my contract, bearing my acceptance of the jointure in full of all, except a half of the household-plenishing, to which it is declared she shall have right. The Lords thought this clause would not debar creditors, if they were *in campo*, from affecting that half; and therefore ordained her to find caution to relieve the executor at her first husband's creditors' hands, if he happen to be distressed, to be liable proportionally with the rest of the moveable estate, as accords of the law; reserving her defences in any such process when it shall be intended: For, when the parties design that the relict should have a share in the moveables, not subject to the husband's debt, it is, by an express clause in the contract, provided to be free; and, however this may be quarrelled by the creditors, as in defraud, (unless they be disposed *per verba de presentia*,) yet it will always operate so much as to force the husband's representatives to make it up to her.

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1696. June 12. SINCLAIR of FRESWICK and WILLIAM MAXWELL *against* MR JOHN MOWAT.

THERE being a petition given in by Sinclair of Freswick, and William Maxwell, macer, against Mr John Mowat, advocate, the Lords demurred on this point,—Where a comprising is disposed with warrandice against the disponent's and his author's facts and deeds, excepting the deeds of two persons named, whom they supposed to be the party they heard had granted some writ thereanent, but now, after trial, it is found to have been done by another; whether the exception ought not, in justice and equity, to be extended also to this contravention, though not mentioned, seeing it has been so meant amongst the parties, that at least some deed should be excepted from the warrandice; and these, by mistake condescended on in the right to the apprising, having done nothing, it must be presumed that this was what the parties designed. But, if any deed against the warrandice can be instanced in those named in the disposition and conveyance, then this presumption ceases. Next, it was argued,—This distress extended no farther than to the purging the acquirer's damage and true interest, and refunding the sum they paid for the comprising, and not to the whole extent of the sums disposed and therein contained; for which was cited, *l. 13, D. de Evict. l. 13, et 24, C. eod. tit.*; and Stair, *26th January 1669, Boyd against Wilkie*.

The Lords remitted thir points to be farther heard by the Ordinary.

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1696. June 12. MARGARET FRASER and RORY MACKENZIE of PRESTONHALL *against* LORD LOVAT.

WHITELAW reported Mrs Margaret Fraser, relict of Major Munro, and Mr Rory Mackenzie of Prestonhall, her uncle, against the Lord Lovat, her brother,