

* * * Fountainhall reports this case :

1687. *February 23.*—THE case of Irvine and her curator against Mr Robert Irvine her father was reported by Drumcairn, being a pursuit for employing the sums contained in her mother's contract of marriage. THE LORDS modified 500 merks to be paid by him to her for bygone aliment, and find it relevant to oblige the defender to secure the pursuer in the terms of the obligation for 4000 merks, that the defender the father has acquired the said sum, and in a condition to employ it ; and as to the other obligation of other 4000 merks, decern him to employ it in the terms of the contract, and reserving his own diferent. This was contrary to a former interlocutor on Tarbet's report, whereby the father was found *dominus* and fiar of the sums, and that the provision was only a destination of succession, if he disposed not otherwise on them. Against this, Mr Irvine gave in a bill, *alleging, imo*, The conquest must only be understood of what he acquired during that marriage with her mother, he having many children now of a subsequent marriage ; *2do*, That having two daughters of that first bed, he has the power of distributing it as he finds them deserving, and she having misbehaved, he will give it to the other, a father being best judge of that.

No 90.

Fountainhall, v. 1. p. 449.

1696. *July 2.*

HAMILTON *against* HAMILTON.

HALCRAIG reported the Children of Hamilton of Newtown, and Gabriel Hamilton of Westburn, their uncle, against the said Hamilton of Newtown, their father, for implement of the provision of 10,000 merks contained in their mother's contract of marriage, whereby it was made payable at the death of the first deceaser, and *ita est* their mother was dead. *Alleged*, The children being minors within pupillarity, none could give him a valid discharge and renunciation on payment, he being their administrator in law. *Answered*, The uncle, by the contract, being the person at whose instance execution was appointed to pass, he could discharge, and he craved up the sum that it might bear annualrent. THE LORDS thought it not fit to loose the filial dependence on parents ; but, in respect of the conception of the contract, they decerned him to secure that sum to the children with the annualrent thereof ; out of which he was to have allowance for the alimenting and entertaining them *primo loco*, seeing they would not permit his children (though he was married again) to be taken from him, their education belonging to him *jure naturæ* ; and that the securing it could not be suspended to their respective marriages or majority.

No 91.

Fol. Dic. v. 2. p. 285. Fountainhall, v. 1. p. 725.