

1697. July 8. MARGARET CALANDER *against* MARY RUSSEL.

No 171.

MARGARET CALANDER, relict of James Russel, merchant in Stirling, pursues Mary Russel, his only daughter and heir, for paying her annuity of 600 merks, contained in her contract of marriage. *Alleged*, She is more than satisfied by her intromission with the moveables. *Answered*, Her intromission therewith being by virtue of a singular title, viz. as universal legatrix nominated, it can never be ascribed in payment of her jointure, the obligation whereof is heritable, and must affect the heir; likewise, she is provided to a part of the conquest, so she will apply her intromission with the moveables to her share of the conquest *primo loco*. *Replied*, Though the obligation for the jointure be heritable *quoad creditorem*, yet it is moveable as to the debtor, and will *primo loco* affect the executry; and the clause of conquest can take no place till the debts be paid; but *ita est* her obligation for a jointure is a debt. THE LORDS sustained the defence, and found the moveables liable *primo loco* for implement of her contract, and that her intromission therewith did satisfy the same *pro tanto*, seeing *debitor non præsimitur donare*; though the obligation for her jointure had *tractum futuri temporis*, and so it was contended ought only to affect the heir, because rights of that nature do properly accresce to heirs.

*Fol. Dic. v. 2. p. 148. Fountainhall, v. 1. p. 783.*

1706. July 24. WEMYSS and WHITE *against* MURRAY.

No 172.

A PERSON having given a disposition *mortis causa* of her wearing clothes to her aunt (who was also her creditor) that had attended her during her sickness, and at the bearing of her children; the LORDS found, that this was not to be considered as payment or satisfaction, but as a mere donative.

*Fol. Dic. v. 2. p. 148. Forbes.*

\* \* This case is No 42. p. 912. *voce* BANKRUPT.

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S E C T. VIII.

Rights taken in name of Third Parties not delivered.

1672. February 1. SIR JAMES COCKBURN *against* The LAIRD of CRAIGIVAR.

No 173.

SIR JAMES COCKBURN, as assignee by Bailie Mercer, having charged the Laird of Craigivar to make payment of a sum due by bond, he suspends on this rea-

An assignation taken and intimated