

## MUTUAL CONTRACT.

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1734. July 4.—1735. January 29.

KENNEDY and OTHERS, CREDITORS of WATSON, *against* CAMERON and OTHERS.

A TOCHER being contracted with the bride, and the husband taken bound to infest her in a jointure, and to provide the fee to the issue of the marriage, but instead of performing, having sold the lands and broken; his creditors, as having right to the tocher, pursuing her brother, the Lords found the contract not voided, but found the defence relevant to assoilzie *in hoc statu*. The meaning was, that the brother had right to retain till the contract was implemented to the wife and children, if there should be any, and therefore the creditors could not demand it while the marriage subsisted.

No. 1.

1734. July 27. BARHAM *against* LORD MORDAUNT.

THE contrary (of No. 1.) found where the wife was infest and consented to her husband's disposing her jointure lands: Then she has no preference in her tocher.

No. 2.

1735. January 18.

LUTWIDGE and HIS FACTOR, *against* ARCHIBALD GRAY, and OTHER MERCHANTS in Glasgów.

THE Judge-Admiral found freight due for such part of the cargo as was saved, though damnified, in respect of the freighters intromitting there-with and acknowledging the property; and found them liable for the full

No. 3.  
Contract of  
affreightment.

No. 3. freight of the goods saved, though not brought by the pursuer to the port of delivery, in respect he had another ship ready for transporting them thither from the place where the shipwreck happened; and found no necessity for new bills of lading while the former bills subsisted. But in a suspension we found that the contract of affreightment was dissolved by the total loss of the ship, albeit some of the cargo was saved; and found that the freighters indorsing the bills of lading (even as to part of the cargo saved) to the insurers, did not subject them to the freight of any goods recovered by the insurers: But found freight due *pro rata itineris* of such goods as were brought by the freighters to Glasgow, notwithstanding that some of the tobacco was found damnified and burnt there, 12th February and 5th July 1732.—But Lutwidge appealed, and both these interlocutors were reversed in Parliament; and it was declared that the freighters were liable for the full freight of such of the goods as were given up to the insurers and *pro rata itineris* of such as were brought to Glasgow, notwithstanding some of the tobacco was found damnified and burnt there, 23d February 1734.—Then the freighters claimed a proportion of L.150 sterling paid by them of salvage, which the Lords first found not competent or consistent with the decree of Parliament, 23d July 1734; but afterwards they found the point of salvage entire, and found *in jure* that the freight is not liable in contribution for the salvage of the cargo, 18th January 1735.

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1736. June 25.

RANKINE against RANKINE.

No. 4.

A PROVISION in a tenant's contract of marriage of his stock and conquest to the heirs and bairns of the marriage, found to bring in all the children *in capita* as heirs of provision, though some of the subjects afterwards conquest were heritable. *2do*, Though it was thought that the father has a power of division, yet the taking heritable bonds to heirs and assignees did not prejudice the younger children's right. *3tio*, The eldest son could not discharge that provision on death-bed in prejudice of his children. *4to*, That the father could not by disposing to his younger children on death-bed, prejudice the children of his eldest son. *5to*, That what was given by the father to his eldest son at his marriage settlement, though not bearing in satisfaction either in whole or in part, yet must be imputed in part payment of his provision, 17th February 1736. And this last anent the imputation was adhered to, 25th June 1736.