

1737. *June 15, and July 13.* CHRISTIAN STENHOUSE *against* JEAN YOUNG.

This case is reported by C. Home, (p. 96. *Mor.* 11444.) where the facts and argument are stated; also by Elchies, (*Mutual Contract*, No. 6.)

Lord KILKERRAN'S note is as follows:—

“ Had the father implemented the contract of marriage, there was no doubt made but that the father might have made an unequal division, which is the shape in which the answer to the bill puts the case. But it is really not the case; the father has made no division of his effects, only he has taken his estate in the common way to heirs and assignees whomsoever.

“ It was further observed, that the petitioner had not put his case upon the proper foundation, collation having nothing to do in the matter, but from the fact itself as stated, this occurred to the Bench, that by the contract of marriage the children were creditors to their father in the stipulated sum of 6000 merks, so that there being but two daughters, each was creditor in 3000 merks; and that the father having given 2000 merks to Christian in the name of tocher, the same must impute in her 3000 merks in which she was creditor. If there was any residue over the 6000 merks, it would divide between the daughters.

“ Interlocutor.—Find that Alex. Young being bound by his contract of marriage, to secure in land, or other sufficient security, the sum of 6000 merks to himself and spouse, and longest liver in liferent, and to the bairns of the marriage in fee, Find that the two daughters, Jean and Christian, were by the said contract, creditors upon the said 6000 merks; and 2000 merks, being stipulated to be secured to James Stenhouse, husband to the said Christian, in name of tocher, upon the tenement in Liberton's Wynd, Find that the said 2000 merks ought to be imputed *pro tanto*, in payment of the said Christian's share of the said 6000 merks; and that, after deducting the said 2000 merks, there remains only 1000 merks due to Christian, and the pursuer, her daughter, as her share of the said sum; and find that Jean Young, the other sister, remains still creditor to her father in the other 3000 merks; and that the free estate of Alexander Young must, in the first place, be applied for payment of the said respective sums of 3000 merks, and 1000 merks; and that the remainder falls to the said Jean Young and Christian Stenhouse, equally betwixt them; and refuse the other points of the bill; and remit to the Ordinary to proceed accordingly.”

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1737. *June 22.* BELL of Blackwood-house *against* JOHN GARTSHORE, Merchant in Glasgow.

THIS case is reported by Lord Kaimes (*Rem. Dec.* 2—16; *Mor.* p. 2848.) and by Clerk Home, (*Mor.* p. 2853.) The circumstances are fully stated in these two reports, to which reference is therefore made.