
CONDICTIO INDEBITI.

No. 1. 1735, Feb. 14. THOMAS ROSS *against* M'CULLOCH.

THE Lords sustained the *condictio indebiti* against Ross, notwithstanding he was an assignee and had obtained two decreets, in respect of the reservation in the discharge,—and adhered to the Ordinary's interlocutor. Found the defender not liable in annualrent in respect of his *bona fides*.—22d February Adhered.

No. 2. 1745, June 25. EARL of PETERBORROW *against* MRS MURRAY.

WE generally agreed that if this receipt and obligation had only borne a discharge, no action or condition would have lain against Mrs Murray, and even as the case stood, had Earl Peterborrow knowingly omitted to found upon it to extinguish the account; but as his only fault was that he trusted Mr Somervell's account to be full and fair, and as the writing contained also an obligation on Mr Somervell to account,—therefore sustained process, and found the defender his daughter liable, as the payment was made only to her husband as having right *jure mariti*.

CONDITION.

No. 1. 1733, Nov. 17. CAPTAIN HALKETT *against* SIR G. WARDLAW.

FOUND the condition did not exist, and the portions not due.

No. 2. 1738, July 7. DRUMMOND *against* DRUMMOND.

A PROVISION in a contract of marriage to daughters “in case after my decease there shall be no heirs-male in life of this marriage,”—the Lords found, that (a son of the marriage) an heir of the marriage, having survived the father, no provisions were due.

No. 3. 1744, Nov. 20. JAMIESON *against* TELFER.

THOMAS TELFER, younger of Townhead, granted to his younger brother William a bond of provision of 2500 merks, payable after the death of the longest liver of both father and mother, bearing to be granted at the father's desire in satisfaction to William of all bairns part of gear, portion, executry, or any thing else he could claim through the death of father or mother, of all which of the same date William gave him a discharge,—as the bond also bore. William a travelling chapman died in England, and named Jamieson his executor for behoof of his brother. Jamieson who administered was himself a creditor and paid his other debts and funeral charges, and thereby a balance was due to him