

1737. *January 7.* JEAN TRAIL *against* JOHN TRAIL of Elseness.

No. 5.

THE estate of Elseness was by John Trail's contract of marriage provided to the heirs whatsoever to be procreated of the marriage; and thereafter he disposed it to his eldest son Patrick and the heirs-male of his body, whom failing, to his second son David and the heirs-male of his body, whom failing, to the other heirs-male to be procreated of the said John the father, whom failing, to the eldest heir-female to be procreated of Patrick's body, &c.; and Patrick dying without sons, his daughter claimed the estate on the contract of marriage against the second son David's son. Lord Newhall found the contract of marriage sufficiently implemented by the above disposition, though preferring the heirs-male to the heirs-female;—and the Lords adhered.

1737. *July 13.* CHRISTIAN STENHOUSE *against* JEAN YOUNG.

No. 6.

A HUSBAND obliging himself in his contract of marriage to secure 6000 merks to himself and spouse in conjunct-fee and liferent, and to the heirs and bairns of the marriage in fee, and providing also the conquest to the heirs of the marriage, the husband purchased some houses and took the rights to heirs whatsoever, and in one of his daughters contract of marriage gave with her in tocher 2000 merks, which he secured by wadset on one of these houses; and having died, having only that daughter and another; the Lords found the two daughters creditors by the contract in 6000 merks; that the 2000 merks must impute *pro tanto* in that daughter's half, whereby she is creditor in 1000 merks more, and the other daughter in 3000 merks; that the defunct's free estate must be applied first in payment of these sums, and the remainder divides equally betwixt the two daughters.

1738. *June 29.*

JEAN BURDEN and HER HUSBAND *against* DAVID SMITH.

No. 7.

CONTRACT of marriage, providing 7000 merks to the wife in liferent and to the children in fee, and the conquest, the half to her in liferent, and the whole to the children in fee; but in case of no children surviving him,

No. 7.

or their dying before majority or marriage, the fee of the equal half of the 7000 merks and conquest to the wife, and the liferent of the whole conquest, all which is assigned to her *per verba de presenti*; both wife and children survived the husband, and one child survived the wife; and the wife having named her second husband her executor and universal legatee; it was found that the wife was a proper creditor for the half of the 7000 merks and half of the conquest, and that the same fell under her general disposition to her second husband of all debts due to her, albeit the condition had not existed till the death of the child who survived her, 19th February, 19th June, and 18th July 1735; and this was affirmed upon an appeal 27th April 1738.—And the husband having on death-bed given his wife a bond of 8000 merks, (by and attour her former provisions) payable in case of his children's death before marriage or majority; this bond the Lords also sustained, and found the same conveyed by the general disposition, (for they thought the father who left all to the children might substitute to them a part notwithstanding of the provision in the contract of marriage,) and they found that there was no place for a legitim in this case, where the whole present stock and conquest was provided by the contract of marriage, though it had not the clause in satisfaction of their legitim, 19th June, 18th July 1735, 18th and 24th February 1736. But the whole of this last was reversed upon the appeal, and the children were found entitled to a legitim. *Vide* all the interlocutors and the judgment in a petition, 29th June 1738, the last paper in this case.

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1738. *July 20.* BANNERMAN *against* SIR ALEXANDER BANNERMAN.

No. 8.

A WIFE in her contract of marriage assigns her bond of provision by her brother, dated of for 1000 merks, with power to the husband to call for the bond of provision from all havens thereof, which sum the husband and his cautioner, with the husband's stock, were bound to employ for the wife and children. The Lords found the tocher presumed paid.

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1738. *July 25.* JEAN, &c. NISBET *against* NISBET of Dirleton.

No. 9.

DIRLETON, by his contract of marriage with his second Lady, became bound against the next term to provide L.100,000, to bestow the same