No. 12. 1739, Feb. MARQUIS OF ANNANDALE *against* EARL OF HOPETOUN.

THE Lords granted certification. They were unanimous as to all the defences except that of the act of Parliament 1594. I thought Lord Hope was in the terms of that act. Monzie thought so too but did not vote. Some of the Lords thought the act concerned only procuratories where there were separate dispositions produced as the remote warrant of the charters. Others thought it concerned all processes and dispositions, but that Marquis George's possession could not be conjoined to make 40 years, but the vote was in general.—25th June 1735.

The Lords, 22d June 1736, altered the first part of the Ordinary's interlocutor, and found that notwithstanding the certification the debts of Marquis James may affect the estate of Annandale, but adhered to that part finding the articles onerous; but altered the last part, and found that upon the act 1695 there lies relief to the heir against the executry and other estate of the last Marquis.—6th July 1737, The Lords adhered as to the two first points.

These mutual bills and answers have on different accounts (chiefly for a full Bench) lain over these 12 months, and at last this day (6th July 1737) we unanimously adhered to that part of the interlocutor, 22d June 1736, finding the contract onerous. 2dly, We also adhered to that part, finding that notwithstanding the certification and decree of the House of Lords the onerous debts of James Marquis of Annandale may affect the estate of Annandale, *sed renit.* Royston, Minto, Drummore, Murkle. But we thought it not proper to determine the point of relief on the act 1695 till the relief upon the other grounds were at the same time determined, and therefore remitted both to Arniston in place of Newhall.

The point of relief competent to the Marquis against the Earl of Hopetoun, which upon 6th July last was remitted again to be heard by Arniston as Ordinary came this day, 31st January 1738, on his report to be decided. The Lords found, that in so far as the Marquis is liable for this debt on account of the last Marquis's infeftment he the Marquis has no relief, *renit.* President, Royston, Drummore, Strichen, *et me.* But in as far as he is liable on the act 1695 they found relief competent to him and adhered to the former interlocutor.

N. B. The case came by appeal before the House of Lords in February 1739, who found the contract gratuitous *quoad* the L.1250, and therefore found the Marquis not liable. They also affirmed the judgment, that onerous debts may affect the estate notwithstanding the certification, but found no relief competent to the Marquis, neither as liable on the 1695, nor the infeftment, since the last Marquis burdened the heir with it.

No. 13. 1739, Dec. 19. JAMES RUSSEL *against* GORDON.

THE Lords found the bond *contra fidem tabularum*, and therefore not effectual even against the son during the existence of the wife or children. *Renit.* President and Drummore. Indeed Arniston thought it would not be effectual even against the son after the dissolution of the marriage without children, because it was a sort of concussion upon

him; and some others were of the same opinion; but of that I own I doubted; and we did not determine it. We also unanimously found, that by this bond there was no *jus quæsitum* to the children, but that the father might if he pleased give it up.

No. 14. 1739, Dec. 21. CAPTAIN, &c. CAMPBELL *against* ELIZABETH CAMPBELL.

See Note of No. 2, *voce* ARBITRIUM BONI VIRI.

No. 15. 1739, Dec. 14. ALISON PRINGLE *against* THOMAS PRINGLE.

THE Lords found that Thomas Pringle, the son, having succeeded by disposition to his father, in lands exceeding his share of the provision in the contract of marriage, that his said share is thereby satisfied and extinct; for they most justly considered this obligement not as a debt to be paid first out of the executory, and then the heritage, but as a settlement by the father of his succession, whereby the father was bound to the respective children, that their succession should amount to the sum contracted, and that the father fully implemented it by letting the succession devolve to them severally (though no disposition had been made by him) to the extent of their shares of that sum. 8th February 1740, The Lords adhered.

No. 16. 1740, June 11. JOHNSTON, &c. *against* JOHNSTON, LADY LOGAN.

THE Lords, in consideration of the circumstances of the case, and particularly the cause expressed in the first bond of corroboration, for the brother renouncing the clause of return in his father's bond of provision, which was, that failing children of Mary-Anne, the 8000 merks should return, and instead of that clause making the clause to return in case of her dying before marriage, and in the same deed granting an additional provision for 7000 merks, payable indeed at the first term after Mary-Anne's marriage, but to return in case of her death without children lawfully procreate of her body, and existing at the time of her death;—the Lords were of opinion that the granter had this event in his view, and as his sister had a sufficient portion, the 8000 merks for a marriage settlement, his meaning was, that she should not disappoint the clause of return by assigning even in her contract of marriage, and therefore found the clause of return still effectual notwithstanding the said contract; and the said Mary-Anne having already assigned the money, found the assignee, Captain Napier, obliged, upon payment, to find caution to repeat, in case the condition of the return shall exist. This was unanimous.

No. 17. 1740, Nov. 6. JACK *against* HOOD.

THE Lords (6th November 1739) found the father's obligement to the son in the contract of marriage is void by the dissolution of the marriage within year and day without issue, and that the son's assignment conveyed no more than the debt, such as it was. *Renit.* President, Royston, Minto, Murkle, Arniston.