

No 152.

that time he had the expectation of nearer heirs, and questionless had it in his view that those subjects might be inherited by his own children, while his nephew's L. 300 was to be a burden upon his executry. THE LORDS repelled the defence against the pursuer's title, and found, That, notwithstanding of his being heir, he was not excluded from pursuing for the debt libelled. See APPENDIX.

*Fol. Dic. v. 2. p. 145.*

No 153.

1739. December 14. PRINGLE of Symington *against* ALISON PRINGLE.

IN a contract of marriage, the husband obliged himself to provide 12,000 merks to the children of the marriage, payable at marriage, or at the male children's age of 21, and the females age of 16, which event should first happen : And it is declared, " That the foresaid sum should be in full satisfaction to the children of all that they could claim from their father, except what he should give or provide to them of his own free will ; as also, excepting what should accresce or belong to them as his heirs or nearest of kin." THE LORDS were of opinion, That an obligation of this sort is not to be strictly interpreted like a bond of borrowed money ; that it implies no more, than that in all events the children shall enjoy or succeed to their father's effects, to the extent of the sum stipulated ; and therefore the heir, who in the present case succeeded to the land-estate *præceptione hæreditatis*, by a disposition, bearing love and favour, claiming over and above, from the younger children who succeeded to the moveables, his proportion of the said 12,000 merks, they found, That the claim was satisfied and extinguished by his succeeding to the land-estate. See APPENDIX.

*Fol. Dic. v. 2. p. 145.*

No 154.

Two persons being found conjunctly liable *ex delicto*, and one of them having furnished the other with a sum of money which he used in paying a composition, it was presumed not to be advanced by way of loan, but as the advancer's share of what they had been found liable in.

1745. January 29.

JOHN DUNCAN *against* JOHN YOUNG.

DAVID GIBB and James Keith having been prosecuted before the Justices of Peace of the shire of Kincardine, at the instance of John Williamson, brought afterwards an action of wrongous imprisonment, oppression, and damages, for the procedure had in that process, against the Justices, Clerk, Procurator-fiscal, and private party.

John Young of Stank, the Clerk, was entrusted by the rest of the defenders, as John Duncan this pursuer alleged, with the management of the cause, and obtained an interlocutor assoilzieing them all except Williamson, who was found liable.

A reclaiming bill was presented for Williamson, on which Mr Young impe- trated from him a disclamation of the process, and the LORDS having, on a suspicion which they entertained, examined into the manner of obtaining this, it