

The Lords, (6th November 1740) altered the interlocutor of 6th November last, and found that no part of the obligation by the father to the son for 2000 merks being provided to the issue of the marriage, the obligation does not resolve by the dissolution of the marriage within year and day. *Pro* were Royston, Milton, Minto, Arniston, Murkle. *Con.* were Drummore, Kilkerran, Dun, Balmerino, *et ego*,—and so it carried by the President's casting vote. 9th June 1742, The Lords Adhered.

No. 19. 1742, Feb. 8. ROBERTSON *against* MRS JEAN KERR.

See Note of No. 6, *voce* LEGITIM.

No. 20. 1743, June 4, 8. HEIRS of STEWART of Phisgil, *Competing*.

JUSTICE-CLERK seemed to think the exclusion of Agnes Stewart in the tailzie 1719 had no effect by the law of Scotland; but all the rest that spoke, particularly Arniston, thought that where there was a destination of succession to heir-male or heir-of-line with an exclusion of a particular person, that was a virtual institution of the next. Arniston observed in this case, that as to the wife's estate, there was no obligation upon the husband, but a conveyance and destination by the wife, by which the husband was made *fiar*; and the question was, Whether he had powers to alter the destination?—that he could not alter so as to prefer strangers, and doubted much whether he could even prefer the heirs-male of the marriage to the heirs-of-line. Kilkerran thought that *quoad* the conquest he had power;—but without putting a question, we found that Phisgil could not prefer his own daughters to his son's daughters, and therefore reduced, 4th January 1743.—8th June, The Lords *nem. con.* adhered, but with a further addition of finding the entail inconsistent with and *in fraudum tabularum*; which we did at the pursuer's motion.

No. 21. 1744, Jan. 13, 31. MISS MURRAY and CREDITORS OF MR MURRAY.

See Note of No. 13, *voce* EXECUTOR.

No. 22. 1744, Dec. 11. CREDITORS OF MR MURRAY *against* GRAHAM.

See Note of No. 6, *voce* LOCUS PÆNITENTIÆ.

No. 23. 1745, Feb. 19. MRS FRANCES KERR *against* JOHN YOUNG.

See Note of No. 14, *voce* LEGACY.

No. 24. 1747, June 30. BEATSON of Killrie *against* MARGARET BEATSON, &c.

A BOND of provision by a brother to his sister, payable at her marriage, *proviso* that if she should have no children, the fee of the principal sum shall fall, accresce, and pertain to the granter and his heirs; and she having assigned the bond to her husband in consideration of the settlements by him on her; both of them charged the brother, who

suspended because of the foresaid *proviso*. We thought that this condition of the bond could not be disappointed by assigning even in a contract of marriage;—but we thought for the wife's necessary use it might be spent, and that she ought not to starve while that money was owing; therefore we would not oblige the husband to find caution to repeat the money upon the conditions existing, because should the wife be reduced to beggary, the cautioner would remain bound. But we found the husband obliged to give his own bond to repeat in that event, whereby there might be execution against his effects if he any had, 19th February 1747. But, June 30, we altered, and obliged him to give caution.

The Lords, 30th June, found that this bond being granted by the brother, Kilrie, without any antecedent cause, therefore that Margaret Beatson's husband, as her assignee, could not uplift the money without caution to repeat in case of no children.

No. 25. 1748, July 16. ARMSTRONG *against* JOHNSTON.

In a contract of marriage betwixt this Johnston and one Armstrong, Christopher Armstrong, the bride's brother, and another Christopher Armstrong, became bound for L.10 sterling of tocher; and the husband was to be bound, in case of the wife's survivance, to pay her L.10 sterling, and proposed one George Johnston to be cautioner, who was not present. The contract was accordingly written out, and signed by all parties except George Johnston, the husband's cautioner, and was left in the writer's hand to get it signed by him, and till he got payment of his own dues,—and the marriage went on:—This was in 1732, and the intended cautioner, George Johnston, is now dead, without signing. The husband had paid the writer, and got up the contract, and charged Armstrong, who is bound for the tocher, who suspended. Strichen, Ordinary, took the writer's oath as a depositar, and the fact came out as above. The reason of suspension was, that the contract was imperfect, and he not bound, because George Johnston, the husband's cautioner, had not signed. Strichen found the letters orderly proceeded, the husband finding new caution to the wife. On a reclaiming bill, when sundry precedents were quoted, Arniston (in the chair) greatly doubted of the interlocutor. However, in respect marriage had followed, whereby the wife dispensed with George Johnston's subscribing, and that the suspender had no interest in it, therefore we adhered, and refused the petition.

No. 26. 1751, Feb. 26. MRS FORRESTER *against* BELL.

27th December 1743, Elizabeth Sommerville was married to John Forrester, without any marriage contract, and sometime after he fell ill, and 28th April 1744 executed a bond of provision for his wife on the narrative of the marriage and verbal conditions then agreed on, of 12,000 merks in liferent, in case she survived him, and to the bairns, one or more, to be procreated of the marriage in fee, whom failing, to the wife, and in further security made over his plantation in Jamaica, and in the same event of her survivance made over to her his household furniture, and these provisions are declared to be in satisfaction to her of all terce of lands, half or third of moveables; and it contained a clause dispensing with the not delivery; but no mention was made of his present sickness, or danger of death, and at the same time he consented to a testament executed by her of a por-