

No 70.

nevertheless, it must have been recorded, if to be sustained as a real burden on the lands whereon that sasine was taken; for it is only the register which people do, or are bound to search for that purpose, and with which the common register has nothing to do.

THE LORDS found the clause in the contract of marriage, burdening the lands, baronies, tenandries, and others, and the resignation therein mentioned, with the payment of Sir David Murray's debts, contained in a particular list and inventory thereof, neither expressed in the contract of marriage aforesaid, nor registered in the register of sasines and reversions, does not render the debts in question a real burden upon the lands conveyed by Sir David Murray to his son, Alexander, by the said contract of marriage.

C. Home, No 120. p. 191.

1748. June 3.

BEATSONS *against* BEATSON.

No 71.

A PERSON made a settlement of his estate upon his second son and his heirs, burdening him with provisions to his younger brothers and sisters. The eldest son had left the country, on account of the Rebellion 1715; but the father, by a special clause in the disposition of the estate, allowed it to be redeemable by certain persons for a rose-noble; and, in a separate deed, he named his eldest son, and two others for his behoof, to be the persons entitled to redeem it. The father died; the eldest son returned to the country; but without redeeming; took possession of the estate, in right of his apparenacy. The second son having ceded the possession, and accounted to him for the rents, got from him a disposition to a separate tenement. The eldest brother died without heirs, the second brother having predeceased him; upon which the estate was taken up by a son of the latter. The other brothers and sisters of the young man's father pursued their nephew for the provisions which were devised to them by the original settlement. The defender *pleaded*, That his father, indeed, might have been liable to make good these provisions, but that he did not succeed in the right of his father, being heir to his uncle, the elder brother, who was not liable for these provisions.—THE LORDS found, that these provisions were a burden upon the succession.

Fol. Dic. v. 4. p. 68. Falconer.

*** This case is No 63. p. 2327. *voce* CLAUSE.