

THE LORDS found, that the pursuer could not claim the benefit of the transaction between the Earl of Breadalbane and the Lord Monzie.—See PRESCRIPTION.

No 16.

Act. *R. Craigie, Lockhart, & R. Dundas,*

Alt. *W. Grant, Haldane, Ferguson, & J. Erskine, jun. Clerk, Kirkpatrick.*

Fol. Dic. v. 3. p. 304. D. Falc. v. 1. No. 136. p. 167. No. 150. p. 189.

No. 157. p. 202. No. 158. p. 203.

* * See Kilkerran's report of this case, *voce* PRESCRIPTION.

1750. February 22.

DAVID HENDERSON *against* JAMES SMITH *and* GEORGE GRAY.

DAVID HENDERSON, tenant in Buitlandhill, by his contract of marriage, in consideration of 1700 merks Scots of portion, became bound to provide, against a term, 2000 merks; and to employ these sums, making 3700 merks, 'upon land, or bond bearing annualrent, or other sufficient security, in favour of himself and spouse, and the longest liver of them two, in conjunct fee and liferent, and the children to be procreated of the marriage, in fee;' and to re-employ how often the sum should be uplifted: Providing that execution should pass on the contract, in so far as it was conceived in favour of the wife and children, at the instance of James Smith of Bradshaw, and George Gray in Easter Cairns.

David Henderson survived his wife, and married again; whereupon the persons, at whose instance it was provided execution should pass, charged him to employ; of which he offered a bill of suspension; for that, notwithstanding the terms of the contract, it were unjust to oblige him, a farmer, to give over his business, and lay out his money on security, which would be greatly to his prejudice, at the instance of his children, who could only claim to be his heirs; and this step would also be highly to their prejudice; for, thereby he would be disabled from alimentering them. The bill was passed, and suspension expedite, without caution or consignation.

The trustees arrested his effects, and he gave in a complaint; to which they answered, the suspension was never intimated to them, so they could be in no contempt; but, supposing it had, a suspension does not hinder arrestment; and the respondents having done what they thought their duty, submit the import of the contract to the Lords.

Observed, That, in ordinary cases, after an expedite suspension, arrestment may be used; but here the suspension proceeded upon there being no ground for a charge.

THE LORDS ordained the arrestments to be loosed, without caution.

Act. *Millar.*

Alt. *Lockhart.*

Fol. Dic. v. 3. p. 305. D. Falc. v. 2. No 133. p. 151.

No 17.

A farmer bound himself, in his contract of marriage, to settle a certain sum, 'upon land, or bond bearing annualrent, or other sufficient security, in favour of himself and spouse, and the longest liver of them two, in conjunct fee and liferent, and the children to be procreated of the marriage, in fee;' Found, that he was not bound to fulfil the contract, by selling the stocking of his farm, though he was otherwise unable to implement it.

No 17.

*** Kilkerran reports the same case :

DAVID HENDERSON, tenant in Buitlandhill, in his contract of marriage with Katharine Smith, daughter of Thomas Smith, tenant in Foord, became bound to provide, and have in readiness, of his own proper means, at the term of Martinmas after the marriage, the sum of 2000 merks, which, with 1700 merks of tocher, he became bound to lay out on land, or other security, and to take the rights thereof to himself and spouse, the longest liver, in conjunct fee and liferent, and to the children to be procreated of the marriage; which failing, to himself and his heirs whatsoever, in fee; and execution was provided to pass at the instance of James Smith and John Gray, two neighbouring tenants.

This marriage dissolved by the death of the wife, leaving three children, now living in family with their father; and the said Smith and Gray registered the contract, and thereon raised horning and arrestment, and charged him to lay out and employ the sum, in terms of the contract.

Of this, he having complained by bill of suspension, the LORDS were all so much of opinion, that this charge was not to be allowed to proceed, as what must ruin him, if he should be obliged to convert the stocking on his farm, which was his estate, into money; that, upon report, the bill was passed, without caution or consignation; notwithstanding the reason assigned by the chargers for this diligence, that the suspender, in an advanced age, had married his servant maid, which foreboded no good disposition towards his children; and the suspension was accordingly expedite upon the 23d of November last.

Notwithstanding this, Smith and Gray proceeded to put the arrestments, contained in the letters of horning, in execution; whereof he having complained, as oppressive, and therewith presented a bill for loosing the arrestments, the LORDS 'allowed the bill, for loosing the arrestments, to pass in like manner, without caution or consignation; but found no contempt of authority;' in respect it is lawful to arrest, notwithstanding an expedite suspension.—See PROVISION TO HEIRS AND CHILDREN.—SUSPENSION.

Kilkerran, (PROVISION TO HEIRS AND CHILDREN) No. 14. p. 466..

1750. November 16.

STEWART against SIR PATRICK MURRAY.

No 18.

On the same paper a person granted two bonds, for different sums,

ANTHONY MURRAY, merchant in Edinburgh, granted bond to the children of James Stewart, Attorney in the Exchequer, for 36,000 merks Scots, payable the first term after his death; providing the sons had attained the age of 18, and the daughters were married at the time; or, if not, upon their attaining