

1745. *February 19.* MRS FRANCES KERR *against* JOHN YOUNG.

No. 23.

CONTRACT of marriage providing to a wife a share of household plenishing and other moveable goods that should be in the husband's possession at the time of his death or in communion betwixt them, extended to all moveable *corpora*, but not *nomina debitorum* or current coin. *Vide* LEGACY, No. 14.

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1747. *June 30.*

BEATSON of Kilrie *against* MARGARET BEATSON and HER HUSBAND.

No. 24.

THE like case to that of Johnston *against* Captain Napier, (No. 16. *supra*,) happened betwixt Beatson of Kilrie and Margaret Beatson and her husband, her assignee, with the single difference, that Margaret Beatson had no other provision, and the Lords gave the like judgment, 30th June 1747, after we had 19th February 1747 preceding, found it sufficient for the husband to give his own bond. But on a reclaiming bill we altered that interlocutor, and obliged him to find caution.

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1748. *July 16.* ARMSTRONG *against* JOHNSTON.

No. 25.

Two persons became bound in a contract of marriage for the wife's tocher of L.10 sterling, and the husband was to find a cautioner to be bound in case of his predecease to repay L.10 sterling to the wife; but the person proposed did not sign the contract; however the marriage went on; and the husband charged these two persons for payment of the tocher; who suspended because the husband's cautioner had not signed, and so the contract was imperfect. Lord Strichen repelled the reasons of suspension, and found the letters orderly proceeded, the husband finding caution to the wife before extract.—Adhered.

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1751. *February 26.*

MRS FORRESTER, *alias* ELIZABETH SOMMERVELL, *against* BELL.

No. 26

A DEED was executed by a husband dated 28th April 1744, in favour of his wife, to whom he was married December 1743, on the narrative that there

was no marriage contract, but certain verbal conditions providing 12,000 merks to her in liferent in case of her survivance, and to the bairns one or more to be procreated of the marriage in fee, whom failing, to the wife; and likewise providing to her his household furniture; and for her further security making over a plantation in Jamaica; which provisions were declared to be in satisfaction of all terce of lands, half or third of moveables, and containing a clause dispensing with the not delivery;—and of the same date a testament was executed by the wife with his consent of her own fortune in favour of her other friends. The husband having died a few days after, and having been on death-bed, and as was said given over by the physicians; the question was, whether the marriage having dissolved within year and day, this was to be considered only as a marriage settlement as granted *intuitu matrimonii*, or if it might not in these circumstances be sustained as *donatio mortis causa*, or if it did not imply a dispensation with the marriage subsisting year and day, where there was no probability at the date of the deed of his living eight or ten days? But as the deed did not mention death-bed or his sickness, on the contrary provided for bairns one or more to be procreated; and though he was sick, yet we could not know that he thought himself on death-bed; therefore we adhered to Lord Minto's interlocutor reducing the bond.—26th February 1751, adhered.

See Case of Anderson, 26th November 1747, *voce* PROVISION TO HEIRS AND CHILDREN.

See Irvine against Irvine, 2d March 1753, *voce* FRAUD.

See Angus against Ninian, 6th December 1733, *voce* FIAR.

See Turnbull against Fotheringham, 5th December 1734, *voce* CAUTIONER.

See Edgar against Maxwell, 21st July 1738, *voce* SERVICE AND CONFIRMATION; and Creditors of Scot of Blair, 30th July 1736, *IBIDEM*.

See Fisher against Murray, 8th July 1737, *voce* HERITABLE AND MOVEABLE.

See NOTES.