

No. 16. 1752, July 23. MARGARET OLIPHANT, AND HUSBAND'S CLAIM.

See Note of No. 24, *voce* FORFEITURE.No. 17. 1752, July 14, Nov. 28. DRUMMOND *against* LOGAN.

MARGARET PRINGLE, by a deed in 1743, with consent of Lilius and Mary Weir, her nieces and heirs at law, for love and favour disposed to them equally betwixt them and the heirs of their bodies, and failing any of them by decease without heirs of her body to the survivor and heirs of her body, whom failing to Mr Archibald Murray, advocate, his heirs and assignees whatsoever, all lands, tenements, and other heritable subjects belonging to her, and particularly certain subjects therein mentioned, and assigned to them two-thirds to Lilius and one-third to Mary, and with the same substitution, all her debts, sums of money, and other personal estate, but with the express declaration that it shall not be in the power of the said Lilius and Mary Weir, or any of them to alter or prejudice the order of succession above mentioned, and in case the succession devolve on the said Mr Archibald Murray he is burdened with certain sums to other persons, and the deed contains procuratory of resignation in these terms:—These nieces were then pretty well advanced in years, and both of them had competent provisions of their own,—Mary had 7000 merks. Thereafter Lilius intermarried with Mr George Logan, minister, and Mary with Mr Colin Drummond, professor of Greek and Philosophy in the College of Edinburgh; and by a postnuptial contract of marriage between Mr Drummond and his wife executed sometime after the marriage, he disposed all lands, heritages, and bonds, whether heritable or moveable then pertaining to him or to which he should succeed during the marriage to himself and her in conjunct fee and liferent, for her liferent use only, and to the children of the marriage in fee, whom failing to his own heirs and assignees; and on the other hand she disposed all her lands, heritages, sums of money, heritably or moveably secured, and others pertaining to her, or which she might succeed to during the marriage to Mr Drummond and her in conjunct fee and liferent, and to the children of the marriage in fee, whom failing to her children of any future marriage in fee, whom failing to the said Colin Drummond, his heirs or assignees in fee. Mrs Drummond is dead, and a competition upon a multiplepoinding in name of the tenants arose betwixt Mr Drummond and Mrs Logan, which last claimed preference because of the prohibition to alter. Mr Drummond on the other hand alleged, that notwithstanding the prohibition Mary might convey for onerous causes, and such was a contract of marriage. Answered, That such prohibition could not be evacuated, not even by an ordinary contract of marriage, where the deed proceeded not from the father who is bound to provide his children but from a third party, and where the woman is otherways competently provided, especially where it appears that the donor had the case of the marriage in view by substituting her issue; and quoted the cases of Johnston, and Napier her husband, against Lady Logan, 11th June 1740, Beatson of Kilrie against Mary Beatson, 19th February, 30th June 1747, and 19th December 1740, Duncan Forbes against John Forbes. 2dly, That this was a postnuptial contract long after the marriage and therefore not onerous, so far as it exceeded a