

1756. *January 8.* ——— *against* ———.

AN account of furnishings to the defender's deceased husband being prescribed, it was referred to her oath whether it was resting owing, in terms of the Act of Parliament concerning the triennial prescription of merchants' accounts.

The Lords found unanimously that it was not sufficient for the widow to depone simply not owing, but she must answer special interrogatories, as, Whether or not it did consist with her knowledge that her husband had submitted the payment of this account to arbiters; and whether or not she did not hear him acknowledge that he had got the things stated in the account, but complained that the prices were too high? And, in general, the President laid it down as a rule, that the party was obliged to depone specially whether he had got the things, and, having got them, whether he had paid them, or how? And if he should allege, not payment but compensation, that would be an extrinsic quality in the oath, to be proved otherwise.

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1756. *January 20.* CREDITORS OF KINMINITY *against* LADY KINMINITY.

[*Fac. Coll. No. 177.*]

By contract of marriage the lady got a locality provided to her of certain lands, and by the acceptance thereof the husband takes her bound to pay to the heir-male of the marriage, (upon whom the estate was settled by the contract of marriage,) but to none of the husband's other heirs, 200 merks and 2 chalders of victual yearly. The husband, the party-contractor in this contract, died bankrupt, leaving a son of the marriage, who was charged by the creditors to enter heir to his father, but, having renounced, the creditors adjudged the estate. The question was, Whether or not that adjudication carried this provision made to the heir?

The question resolved in this, Whether or no the heir could take this provision in his favour without representing his father?

It was SAID for the lady and heir,—That he could; because this was a settlement made upon him by a third person, viz. his mother, which, therefore, he could take as *hæres designative* to his father, without actually representing him; that the father, by granting the full locality to his wife, was denuded of so much of the feudal right of the estate, and it was no concern of the creditors what personal obligations she became liable to.

On the other hand, it was SAID,—That as the husband took the wife bound to give this provision to his heir in the very deed by which he gives her jointure, by the acceptance whereof she is bound to make the foresaid annual payment, it is to be considered as the deed of the husband making a provision in favour of his own heir, to take place at his death, which, by the established practice