

1738. December 5. KENNEDY, &c. against CAMERON.

No. 11.

In the above case betwixt Kennedy, &c. and Cameron, (No. 1.) the Lords 9th June 1738, found Doctor Cameron obliged to stock out such of the by gone annualrents of the tocher as are yet due, to make up the principal sum that Mr Watson was by the contract obliged to secure, in the terms thereof, though the prestations on Watson's part be not performed; and found his wife entitled to no aliment during the standing of the marriage out of the tocher. But upon a reclaiming bill, they found that no action for implement of Mr Cameron's part of the contract does lie, till the counter part be implemented.

1739. February —.

MARQUIS of ANNANDALE against The EARL of HOPETOUN.

No. 12.

By contract betwixt the Marquis of Annandale and Countess of Hoptoun, she yielded to him Craigiehall, rated at L.450 sterling, and discharged him of bygoness; but if the Marquis's second son should succeed to Craigiehall, these interim rents at L.450 *per annum* were to be repaid the Countess. *2dly*, If any other heir not of the Marquis's body besides the Countess should succeed to the estate of Annandale, such heir to repay the interim rents of L.450 and L.1250 more, or in the Countess's option a sum equal to the half of the interim rents more. The Countess (who was also executrix to her brother) pursued Marquis George as representing Marquis John, particularly, by passing him by and serving heir to his father Marquis William, after having got certification against the procuratory on which Marquis James's infestment proceeded, (*vide inter eosdem voce* PRESCRIPTION, 25th June 1735,) and being assoilzied from a proving of the tenor of it by the House of Lords. The Lords in this new process, *1mo*, Found the contract onerous. *2do*, Marquis James having been infest, and his infestment often homologated and acknowledged by his father Marquis William the granter of the procuratory, they found, that notwithstanding the decree of the House of Lords and certification here, the onerous debt of Marquis James may affect the estate of Annandale. But found *3tio*, That in so far as this present Marquis is found liable on the act 1695 he has relief against the other estate of the last Marquis, 22d June 1736, 6th July 1737, and 31st January 1738; when they also found that in so far as the Marquis is liable on account of the last Marquis's infestment, he has no relief against the executry and separate estate. But upon appeal, the