

- No 38. go no further than to oblige him to implement, that is, to lay out the money in terms of the contract; but when the action is laid against his representatives, it resolves into an action for payment, because the father's fee dies with him, whereby the heirs and bairns of the marriage fall into the full right. THE LORDS sustained process for payment, and found no necessity for a service. See APPENDIX. *Fol. Dic. v. 2. p. 279.*

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- No 39. 1733. *June.* MONROES *against* DUEF of Drummuir.

A BOND of provision being granted to a daughter, and failing of her by decease, to Hugh Monro, "for the use and behoof of his children," these children after the decease of the institute, and of their father the trustee, were found entitled to pursue for payment, without necessity of a service; for here there was no substitution established, the subject being directly vested in the trustee after the institute's death; and as he had the *jus exigendi* for the use and behoof of his children, they must have the same after his decease. See APPENDIX. *Fol. Dic. v. 2. p. 279.*

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SECT. VII.

Obligation by one in his contract of marriage, to provide certain sums or subjects to the issue of the marriage, how far effectual in competition with creditors?

- No 40. 1608. *June 24.* HOME *against* FRENCH.

MARK HOME pursued French, brother to Thornidykes, for reduction of a bond given to him by his umquhile brother, in respect of an inhibition served by Mark upon a contract of marriage betwixt his daughter and umquhile Thornidykes, giver of the bond, who, by her said contract, was bound not to sell, annalzie, &c. or do any deed to prejudge the heirs of that marriage of their succession to the lands and living of Thornidykes. THE LORDS assoilzied from the reason, and found that that clause of the contract took not from him *libertatem commercii*, but only provided that he should leave the land and living to these heirs of the marriage in the state it should be at his decease.

*Fol. Dic. v. 2. p. 280. Haddington, MS. No 1472.*