her case was a provision in a contract of marriage, which was both rational and onerous; and the pursuer did not plead, that the defunct, as apparent heir three years in possession, could make a valid conveyance or settlement of the estate, but only contended, that the obligement by him in his contract of marriage, providing the lands to the heirs-female of the marriage, was effectual, by the act 1695, to compel the defender, as heir in the investiture, to denude in favours of the pursuer.

No 137.

THE LORDS found, That by the contract of marriage *in anno* 1697, the destination was altered in favours of heirs whatsoever; and in regard that John, though not infeft, was three years in possession of the estate, found the obligement in the contract of marriage binding on the heirs-male. See No 66. p. 8955, *voce* MINOR.

Reporter, *Lord Kimmergham* Act. *Ja. Ferguson, sen.* Alt. *Ja. Graham, sen.*
Clerk, *Gibson.*

Edgar, p. 28.

1726. *January* 26. Marquis of CLYDESDALE *against* Earl of DUNDONALD.

No 138.

ONE passing by an apparent heir three years in possession, and serving to a remoter predecessor, is not bound to fulfil the gratuitous debts and deeds of the apparent heir, and has relief of what debts he pays of the apparent heir' against the apparent heir's representatives in any separate estate.

Fol. Dic. v. 2. *p.* 40. *Rem. Dec.*

*** This case is No 3. p. 1274.; *voce* BASE INFEFTMENT.

*** A similar decision was pronounced February 1727, Mitchell against Wilson. *See* APPENDIX.

1729. *January.* Lord HALKERTON *against* DRUMMOND.

No 139.

AN apparent heir three years in possession of an infeftment of annualrent, having uplifted the same, and granted discharge and assignation, it was found that another apparent heir, passing him by, and serving in the annualrent to a remoter predecessor, could not quarrel the said discharge and assignation. See APPENDIX.

Fol. Dic. v. 2. *p.* 39.

1733. *December* 19. JOHNSTON *against* STEIL.

No 140.

THE defunct's estate, in which he died infeft, being a wadset holding base of the reverser, in which there was a back-tack continuing the reverser in pos-

No 140.

session, and obliging him to pay the neat annualrents of the wadset sum in name of tack-duty, and the apparent heir of the wadsetter uplifting these tack-duties for three years, this was found a possession in terms of the statute, so as to subject the next apparent heir who passed him by, to his onerous debts and deeds.

The possession of a relict by a liferent right granted by her husband, the defunct proprietor, found not to be the apparent heir's possesion in the sense of the act 1695, so as to involve the apparent heir, passing him by, in a passive title. See Appendix.

Fol. Dic. v. 2. p. 40.

No 141.

A son possessed an estate without making up any title thereto, in which his grandfather had died infeft. He was found not liable, on the act 1695, to the creditors of his father, who had died in a state of apparency, after being more than three years in possession.

1736. *January* 8. Janet Sinclair *against* John Sinclair of Rattar.

By contract of marriage betwixt the deceased John Sinclair of Rattar and the said Janet, he provided her, in case she survived him, to the liferent of certain lands, which he continued to possess many years, but died without making up any titles thereto.

Whereupon she brought a process against the said John Sinclair her son, in order to make the provisions in her contract effectual; and insisted particularly on the passive title introduced by the act 1695, her husband having been more than three years in possession.

Pleaded for the defender; The above act can give the pursuer no aid; seeing it provides only for the creditors of the interjected apparent heir, where the next heir succeeds to the remoter predecessor, either by serving heir to him, or by adjudication on his own bond; but the defender is not in either of these cases, in so far as he has not served heir to the remoter predecessor; neither does he possess the estate upon an adjudication on his own bond. And, the statute being correctory of our common law, cannot be extended from the cases specially mentioned to others that are omitted.

Answered for the pursuer; Her action is well founded, both on the first and second clauses of the act, whether they are considered separately or jointly. And, with respect to the first, which ordains, " That, if any man shall serve himself heir, or by adjudication on his own bond, succeed not to his immediate predecessor, but to one remoter, as passing by his father to his grandfather, or the like, then, and in that case, he shall be liable for the debts and deeds of the person interjected, to whom he was apparent heir, and who was in possession of the lands and estate to which he is served for the space of three years, and that in so far as may extend to the value of the said lands and estate, and no farther." Now, though this clause mentions only the next heir succeeding to the remoter predecessor by service or adjudication, these being the ordinary methods of heirs making up titles to their predecessor's estate; yet that does not exclude the case, where the next heir bruiks the estate by other