

No. 7.

or their dying before majority or marriage, the fee of the equal half of the 7000 merks and conquest to the wife, and the liferent of the whole conquest, all which is assigned to her *per verba de presenti*; both wife and children survived the husband, and one child survived the wife; and the wife having named her second husband her executor and universal legatee; it was found that the wife was a proper creditor for the half of the 7000 merks and half of the conquest, and that the same fell under her general disposition to her second husband of all debts due to her, albeit the condition had not existed till the death of the child who survived her, 19th February, 19th June, and 18th July 1735; and this was affirmed upon an appeal 27th April 1738.—And the husband having on death-bed given his wife a bond of 8000 merks, (by and attour her former provisions) payable in case of his children's death before marriage or majority; this bond the Lords also sustained, and found the same conveyed by the general disposition, (for they thought the father who left all to the children might substitute to them a part notwithstanding of the provision in the contract of marriage,) and they found that there was no place for a legitim in this case, where the whole present stock and conquest was provided by the contract of marriage, though it had not the clause in satisfaction of their legitim, 19th June, 18th July 1735, 18th and 24th February 1736. But the whole of this last was reversed upon the appeal, and the children were found entitled to a legitim. *Vide* all the interlocutors and the judgment in a petition, 29th June 1738, the last paper in this case.

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1738. *July 20.* BANNERMAN *against* SIR ALEXANDER BANNERMAN.

No. 8.

A WIFE in her contract of marriage assigns her bond of provision by her brother, dated of for 1000 merks, with power to the husband to call for the bond of provision from all havers thereof, which sum the husband and his cautioner, with the husband's stock, were bound to employ for the wife and children. The Lords found the tocher presumed paid.

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1738. *July 25.* JEAN, &c. NISBET *against* NISBET of Dirleton.

No. 9.

DIRLETON, by his contract of marriage with his second Lady, became bound against the next term to provide L.100,000, to bestow the same

upon land, and to take the securities to himself in liferent and the heirs male of the marriage in fee, and till lands were purchased, to lend the same upon bonds, and take the securities in the same manner; and certain portions were provided to daughters in case of no sons. There was issue of the marriage a son and several daughters, and Dirleton entailed the lands of Craigentenny (in part implement of the contract) to David the son of the marriage and the heirs-male of his body, which failing, the other heirs-male of that marriage, which failing, to Walter, a son of a former marriage, and the heirs-male of his body; which failing, to his own heirs-male of any after marriage, which failing, to the heirs-female of Walter's body, which failing, the heirs-female of David's body, &c. with prohibitory and irritant clauses. David died before his father and mother, and the daughters claimed the L.100,000 as heirs to David. Lord Arniston, Ordinary, found that David having died before dissolution of the marriage, the daughters had no title to that provision; and afterwards found that Dirleton was not bound to settle the L.100,000 on the son of the marriage and his heirs whatsoever without limitation, but that failing the son and heirs of his body, he might substitute whom he pleased, or declare the provision extinct; that the disposition of Craigentenny and substitution therein contained, was a lawful implement *pro tanto*, not quarrellable by the daughters, and adhered to the former interlocutor;—and the Lords adhered.

No. 9.

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1738. November 3. PARKHILL *against* WEIR.

CONTRACT of marriage containing a disposition by the wife to the husband *omnium bonorum*, with a reserved faculty to the wife to dispose of 10,000 merks, was found to imply the burden of the wife's debts at the time, at least *ad valorem* of her effects; and the husband found liable *in valorem* of the subjects intromitted with by him both to her debts and likewise to the reserved family, whether there should remain to him a competent tocher or not, though the case had been otherwise if the disposition had not been general, but of certain partial subjects of whatever value. *Vide* IMPLIED WILL. *Vide* No. 9. *voce* HUSBAND AND WIFE.

No. 10.