No 122.

2*do*, It was *pleaded*; That the provisions in this contract were no larger, if properly considered, than the provisions in Sir William's first contract with Miss Agnew, which was entered into with the approbation of Sir James the maker of the entail; for though the provisions to the daughters may at first view appear larger in the second than in the first contract of marriage, yet there is this material difference, that in the first contract the provisions bear annualrent from the death of Sir William; in the second, only from the marriage or majority of the daughters; and, upon a fair comparison, it will appear, that of the two, the last is the most moderate, because the difference betwixt the interest and aliment would bring the former greatly to exceed the latter.

It was also observed in general, with regard to the proof demanded, that a formal onerous contract executed in writing cannot, by the fixed principles of our law, be liable to reduction upon parole-evidence. The formal deeds of parties in writing are legal evidence of what was finally settled amongst them; and it would unhinge all security by written documents, if any regard was had to previous verbal communings, which are generally loose and unsettled, and never can be retained in remembrance with any certainty.

"The Lords allowed a proof, the pursuer previously condescending upon the facts he intended to prove, and the witnesses by whom he intended to prove them."

Act. *Wight, Ferguson.* Alt. *Garden.* Clerk, *Kirkpatrick.*

J. M. *Fac. Col. No* 12. *p.* 19.

1762. *December* 9.

Duke of Hamilton and Tutors, and Earl of Selkirk *against* Archibald Douglas.

No 123.

The Duke of Douglas, in a postnuptial contract of marriage with the Duchess, dated 1759, settled his estate on the heirs-male of the marriage; whom failing, on those of any subsequent marriage; whom failing, on the heirs-female of the marriage; and failing them, on his own nearest heirs and assignees whatsoever. The Duke of Hamilton, who was an heir under ancient investitures of the estate, argued, that he fell under the description of heir whatsoever by this contract of marriage, in opposition to Archibald Douglas, Esq. the heir of line; and, in support of this construction, the Duke gave in a condescendence of facts, tending to shew, that the Duke of Douglas had no intention, under this termination of his settlement in the contract of marriage, to call his heir of line, but, on the contrary, the heir of the ancient investiture; and of this condescendence a proof by witnesses was craved. *Answered* for Archibald Douglas, Esq; The term heirs whatsoever, denotes the heir of line or heir general. It is allowed, that in some cases *ex præsumpta voluntate*, arising from the face of the deeds themselves, this term may receive a different

construction; but where no such presumption appears from the deeds, it is altogether incompetent to offer a proof by witnesses. THE LORDS found, That from the legal import of the term heirs and assignees whatsoever, Archibald Douglas, as heir of line, was called to the succession; and found, That the parole-evidence offered to the effect of giving a different meaning to the said clause was not competent. No 123.

Fol. Dic. v. 4. *p.* 156.

*** This case is No 40. p. 4358: *voce* FIAR ABSOLUTE LIMITED.

1766. *June* 18. KENDAL & Co. *against* CAMPBELL of Inverliver.

No 124.
How far a written contract can be supplied by witnesses?

IN a minute of sale of woods to a company, there was a reservation of a certain part. The seller insisted, that another part of the woods was also agreed to be reserved, and that it had not been valued along with the rest, though it was omitted in the reservation in the minute, and was not mentioned in a subscribed notandum afterwards added.

This allegation he offered to prove by the witnesses present at the communing, and by the persons who had valued the woods; or, at least, by reference to the oath of the company's agent at the time, and who had himself an interest in the question, as having right to a proportion of the share of one of the partners, though he was no longer employed as agent for the company.

"THE LORDS having considered the minute of agreement, with the subscribed *nota bene*, posterior to the minute, and supplying an omission therein, but making no addition to the reservation; and also considering how dangerous it will be to cut down a written agreement, by parole-evidence, found the defender liable for the price of the whole woods in question."

Act. *Ilay Campbell.* Alt. *Lockhart.*

G. F. *Fol. Dic. v.* 4. *p.* 158. *Fac. Col. No* 36. *p.* 259.

1773. *January* 28.

ROBERT MAXWELL of Glenarm *against* WILLIAM BURGESS in Glenarm.

No 125.
Parole-evidence not competent for proving any obligation against the tenant, other than what is contained in the tack.

IN a charge for payment of rent, founded upon a tack, wherein the only mention made of houses was in a clause conceived thus; "and to keep up the dykes and houses on the said lands, and leave them in a habitable condition at the ish of the said tack, they being to be made so at his entry;" the reason of suspension was, that the charger had failed, in terms of the lease, to build a dwelling-house and office-houses upon the farm; and that the claim of rent was compensable with the expenses laid out by the suspender upon