

in place of Logan, whose possession was by an express commission, or *per tacitam relocationem*, and can be in no better case than he was; besides, the acquisition of the heritable office of Bailie of the earldom must, as a bounding charter, influence Ardincaple's possession perpetually, to hinder him to prescribe beyond the bounds of that office.

No 21.

THE LORDS found, That any charter erecting the estate of Lennox into an earldom, with as ample powers as any other Earls, did not give the Earls of Lennox a right of regality, nor to Balvie, their heritable Bailie of the earldom, a right to be heritable Bailie of the regality; and that Balvie's heritable office of the bailiary of the earldom, did not comprehend an heritable office of bailiary of the regality; and also found, That after the estate of Lennox was erected into a dukedom and regality, Balvie, who was formerly heritable Bailie of the earldom of Lennox, having accepted of a temporary commission for 19 years from the Duke of Lennox, to be Bailie of the regality of Lennox, and having commenced his possession by virtue thereof, he and his successors could not prescribe a right to the heritable bailiary of the regality of Lennox; and found the writs and documents produced for the defender not sufficient to exclude the pursuer's title.

Fol. Dic. v. 1. p. 146. Forbes, p. 697.

1724. *January.* COCKBURN *against* EDWARD.

No 22.

A DECREE-ARBITRAL, bearing that the Judges arbiters are to determine betwixt and the 22d day of December, this is construed to include the 22d day.

Fol. Dic. v. 3. p. 124. Edgar, p. 17.

See The particulars, *voce* ARBITRATION, No 31. p. 640.

* * * In the stile of law, the words 'betwixt and a certain term,' do not exclude the day of the term. *See* Joint Petition of the Advocates, No 10. p. 345.

SECT. IV.

Clauses in Contracts of Marriage.

1685. *March.* JANET LINDSAY *against* JOHN LOTHIAN.

No 23.

A HUSBAND, who stood obliged by his contract of marriage, sufficiently to secure his wife in a jointure, amounting to 1000 merks a-year, having purchased

A husband
being bound
to secure his

No 23.
 wife in a sufficient jointure to a certain extent, was found not to have fulfilled the obligation, by securing her in *houses*, which require repairs, and are liable to be burnt.

some tenements and houses in Edinburgh, and provided the same to her in life-rent; the LORDS found that was not a sufficient equivalent provision to answer the obligation in the contract, because of the accidents of fire, and the considerable reparations that houses are subject to; and therefore decerned against the husband's heir to fulfil the obligation in the wife's contract of marriage; and ordained her to renounce any right to the tenements. Here there was a clause in the contract, That the fund for the wife's jointure should be employed with her father's consent, which was not done.

Fol. Dic. v. I. p. 146. Harcarse, (CONTRACTS OF MARRIAGE.) No 371. p. 95.

No 24.
 A person being bound in his contract of marriage to secure his wife in *well holden lands*, was found to have implemented the obligation, by infesting her in *ward lands*, which are liable to recognition, only on account of particular circumstances attending the case.

1685. *November.*

LADY KIRKLAND and HER SPOUSE *against* Her SON.

A MAN being obliged, in his contract of marriage, to employ 20,000 merks upon well holden land to his wife in life-rent, and to the heirs of the marriage in fee, and execution to pass at her father's instance, who being debtor to the husband in as much as with the tocher made 20,000 merks, gave infestment out of his own ward-lands for the same, in the terms of the contract; the wife, after her husband's decease, pursued his heir for implement of the contract, in respect her father's lands held ward, and were in danger of recognition, and her husband could not collude with him to her prejudice.

Answered: She being infest before the marriage by her own father, who might have stopt the marriage, and at whose instance execution was ordained to pass; it must be supposed, that all parties agreed to the implementing of the contract, by a security out of the father's lands.

THE LORDS, in this circumstantiate case, found the infestment out of the ward-lands sufficient, unless recognition be incurred.

Fol. Dic. v. I. p. 146. Harcarse, (CONTRACTS OF MARRIAGE.) No 376. p. 97.

1724. *December 2.*

JAMES GRAY, Writer to the Signet, Assignee of MARGARET MATHISON, *against* WILLIAM HUTTON, Assignee of PATRICK THOMSON.

No 25.
 A father, as *burden-taker* for his son, a minor, became an obligant in his son's contract of marriage. The son was taken bound to lay out a

THOMAS WHITE, eldest son to Thomas White, indweller in Leith, entered into a marriage contract with Margaret Mathison, in which the father was consentor and burden-taker for his son, and became obliged to pay to him 3000 merks; which, with 2000 merks brought as tocher with Margaret Mathison, Thomas the son obliged himself to ware, bestow and employ upon land, or good security for interest, for himself and his wife, for her life-rent use allenary, and the bairns of the marriage in fee.