

1688, betwixt Alexander Campbell, younger of Calder, and Elizabeth Lort, daughter to the said Lady Susan, she is provided to £700 sterling effective, to be paid yearly in London, by way of jointure; and the children are provided, first in a £1000 sterling in fee, and then to £1500 sterling; and because, by the English law, a wife cannot have action against her husband, therefore a trustee is interposed by way of *fidecommis*. to pursue for implement of her provisions; and it is further covenanted, for the tocher of £4000 sterling paid down, that the said Lady Susan shall have right to the £700 sterling for the use of her daughter; and that the lands shall be settled and assured for the heir of the marriage, as her learned counsel at law shall advise: upon which clauses the said Lady Susan pursued Sir Hugh, not only to secure her daughter, but also the heir; and, for that effect, to serve him heir to his father.

ALLEGED,—As to the relict's jointure, they acknowledge the Lady has a title and interest to pursue for implement; and they are willing to perform: but, *quoad* the fee to the heir of the marriage, there is no clause in the agreement stating the *jus exigendi* in her, whereby she is empowered to *suit* implement for the heir of the marriage.

ANSWERED,—By the foresaid articles, she may claim the fee to be secured by advice of lawyers, in place of whom the Lords now succeed: and if these articles were to be extended conform to the Scots style, persons would be named at whose instance execution should pass for implement, not only of what is provided to the wife, but likewise of the obligations in favours of the heir of the marriage.

Some of the Lords doubted what the import of the articles was; yet the plurality found they gave her the *jus exigendi* for the son as well as the mother; but found he behoved to be served heir before any procedure in the cause: and if the child's uncle, who is his tutor-in-law, refuse or delay to serve him, he may be removed, as supect, by a process, but not summarily on a bill. Which was craved this very week by *Hamilton of Reidhouse* against *his Curators*, for not making inventories: but was refused by the Lords, and remitted *ad actionem ordinariam de removendo tutore*.
Vol. II. Page 92.

1700. February 29. GEORGE NAPIER, *alias* MAXWELL of KILMACHEW, *against* SIR JOHN SHAW, *alias* SIR JOHN HOUSTON.

GEORGE Napier, *alias* Maxwell of Kilmachew, as apparent heir to Sir George Maxwell of New Wark, his father, gives in a petition representing, that Sir John Shaw of Greenock, and now Sir John Houston of that ilk, were carrying on a sale of his lands; whereas it was not proven that his father died bankrupt; and that he was but lately past his minority, and intended to serve himself heir *cum beneficio inventarii*, conform to the late Act of Parliament 1695; and that the estate has been under sequestration these ten or twelve years; and Houston was cautioner for the factor, and so would be paid of much of his debts by that introduction; and therefore craved he might be admitted to his defences, and the roup stopped *medio tempore*.

ANSWERED,—The probation of the rental being closed and advised, and the

diet for the roup set, he could not be admitted, *hoc ordine*, to stop it; neither could he serve heir; because, his father being dead before the Act of Parliament, he had a year allowed him, which is now elapsed; and minors are not excepted by that Act.

The Lords refused the desire of his petition.

Vol. II. Page 94.

1700. *February 29.* LORD CARMICHAEL *against* WILLIAM CHEISLY.

THE Lord Carmichael, secretary, as superior of the lands of the Townhead of Grange, pursues a non-entry. Mr William Cheisly compears, and ALLEGES he has right, by apprising, from Muir of Anniston; and that, by a verbal agreement, my Lord condescended to accept him as vassal, on paying a year's rent; and whereof he had paid his chamberlain a part, and gotten his discharge.

ANSWERED,—Anniston had no right; and so his apprising was against the wrong person. *2do.* The superior would pay the debt and take the land to himself; which is both consonant to the feudal law, *per retractum dominicum*, and to our Acts of Parliament, Act 36, 1469: and any promise emitted, never being redacted into writing, and which could only be perfected by granting a charter, there was *locus pœnitentiæ* before performance; and so the promise is not obligatory.

The Lords considered there was *rei interventus* here, by paying in a part of the composition; and therefore ordained my Lord to depone first anent the promise.

Vol. II. Page 94.

1700. *June 7 and 22.* GEORGE CAMPBELL *against* HIS CREDITORS.

June 7.—MR George Campbell, in the Canongate, gives in a petition to the Lords, craving they may grant him an act and warrant for citing his creditors to this present Parliament, in order to his obtaining a personal protection; seeing, by the Act in 1698, no protection can pass now without citation and hearing of creditors.

Vol. II. Page 95.

June 22.—The petition given in by Mr George Campbell, mentioned *supra*, 7th June 1700, is now renewed, and a warrant to cite his creditors before the Parliament craved; seeing now there is a plain adjournment by the Privy Council's proclamation on the King's letters, from the 20th of June to the 4th of July, by which the Lords found themselves now sufficiently authorised; and therefore granted warrant.

Vol. II. Page 98.

1700. *June 11.* SALE OF YEOMAN OF PITTENCREIF'S LANDS.

IN the action of sale of Yeoman of Pittencreif's lands, it occurred to be argued among the Lords, what price should be put upon the teinds, seeing he had no standing right thereto, but only kindness; and it has been oft designed that