

No 10.

the brieve ; and as in special services the heir would have obtained a precept for infefting ; so by virtue of a general service he may take out any letters upon personal rights competent to the defunct. The objection to the decision betwixt Renton and the Feuars of Coldingham is nothing to the purpose ; for the precept of *clare constat* never being completed by infeftment, was of so much less authority, as it is less solemn than a service.

THE LORDS found, that the contract of marriage *in anno* 1655, can be extended to comprehend no other lands than those particularly therein enumerated, and lying within the Sheriffdom of Haddington ; and that Alexander Livington's general retour as heir of line to his father, gave him the benefit of the provision contained in the said contract, and enabled him to dispone in favour of his brother, albeit he was not infeft.

Fol. Dic. v. 2. p. 345. Forbes, p. 53. & 74.

. Fountainhall's report of this case is No 69. p. 3261, *voce* DEATHBED.

1708. December 17. SIR ROBERT HOME *against* SIR PATRICK HOME.

No 11.

A PARTY, who was both heir-male and heir of provision to his father, being served *tanquam legitimus et proximior hæres masculus et provisionis virtute contractus matrimonialis*, and having challenged a disposition granted by his father, after inhibition served on the said contract of marriage, which the other party alleged he was bound to warrant as heir-male, and representing the defunct ; the LORDS found, that his retour did not singly make him heir of provision, (upon which title he might have challenged such deeds,) but likewise general heir-male.

Fol. Dic. v. 2. p. 345. Fountainhall.

. This case is No 55. p. 12905, *voce* PROVISION to HEIRS and CHILDREN.

No 12.

One person being both heir of line and of provision, served himself heir in a subject falling to him only as heir of provision ; but, at the same time, as he was

1710. July 18. The LAIRD of AYTON *against* The LADY.

SIR JOHN AYTON of that Ilk having married to his second Lady, Dame Margaret Colvil, he gave her a large jointure and liferent, and provided her children to 40,000 merks, besides the half of the lands of Kinraigie. Mr William Ayton, his eldest son of the first marriage, finding these provisions heavy and exorbitant, he serves himself heir to his father *cum beneficio inventarii*, and raises a reduction, improbation and declarator, against his mother-in-law, and her children, for restricting the extravagant provisions made in their favours, such as the estate, with the other debts on it, was not able to bear, and as being evi-