

is only of the nature of a legacy, which obligeth the executor but not the heir : And if it could take place against the heir, it is a debt of the defunct's absorbed by the L. 7000 bond, quia debitor non præsumitur donare : And *separatim*, suppose the heir were liable to warrant the disposition against onerous creditors and third parties, he could never be obliged to disburden the plenishing of a gratuity given to the Lady herself; nor she allowed to exact from him payment of the bond without allowing him relief of the whole executry, plenishing as well as other moveables; especially considering, that these moveables were at the husband's disposal so long as he lived; and if the Lady had predeceased, her executors had no interest therein : Nor could a general assignation to a subject so uncertain transmit the property without confirmation. The practise betwixt Stuart and Fleming, July 24. 1623, No 116. p. 11439. doth not in the least fortify the Lady's pretence, for it goes upon two specialties, both the bonds bore love and favour, and the second was satisfied in the father's lifetime, without his applying it to payment of the first, or recalling the first. The other decision betwixt Abernethy and Forbes, No 169. p. 11492. doth make as little for the Lady; because the bonds there narrated different preceding causes, and so could never be understood in satisfaction of one another.

THE LORDS sustained both the reasons of reduction, and found, That the Lady cannot claim the liferent of the house, as a separate claim by and attour the L. 7000 Sterling, but that the former must be interpreted in satisfaction of the latter; and found also, That the L. 7000 bond absorbed the disposition of the household plenishing so as she cannot seek both. See No 149. p. 11465.

*Fol. Dic. v. 2. p. 145. Forbes, p. 607.*

1728. December 4.

ROBERTSON *against* EXECUTORS of the deceased DR ROBERTSON.

No 152.

DR ROBERTSON, in his nephew Archibald's contract of marriage, became bound to provide and secure at the first term after his death the sum of L. 300 Sterling to the said Archibald and his future spouse, &c. Thereafter the Doctor secured the sum of 6000 merks upon the estate of Bedlormie by an heritable bond and infestment, which he took to himself and heirs whatsoever. The said Archibald succeeding to these subjects as heir whatsoever, the defunct having left no heirs of his own body, insisted against the executors for payment of the said L. 300 stipulated to him by his uncle in his contract of marriage. The defence was, That Dr Robertson had implemented this obligation by securing L. 300 to the pursuer upon the estate of Bedlormie, which has devolved upon him. *Answered*, When the Doctor took the forementioned subject to himself and his heirs whatsoever, he had certainly no intention of implementing the obligation which he bound himself in, to his nephew. At that

No 152.

that time he had the expectation of nearer heirs, and questionless had it in his view that those subjects might be inherited by his own children, while his nephew's L. 300 was to be a burden upon his executry. THE LORDS repelled the defence against the pursuer's title, and found, That, notwithstanding of his being heir, he was not excluded from pursuing for the debt libelled. See APPENDIX.

*Fol. Dic. v. 2. p. 145.*

No 153.

1739. December 14. PRINGLE of Symington *against* ALISON PRINGLE.

IN a contract of marriage, the husband obliged himself to provide 12,000 merks to the children of the marriage, payable at marriage, or at the male children's age of 21, and the females age of 16, which event should first happen : And it is declared, " That the foresaid sum should be in full satisfaction to the children of all that they could claim from their father, except what he should give or provide to them of his own free will ; as also, excepting what should accresce or belong to them as his heirs or nearest of kin." THE LORDS were of opinion, That an obligation of this sort is not to be strictly interpreted like a bond of borrowed money ; that it implies no more, than that in all events the children shall enjoy or succeed to their father's effects, to the extent of the sum stipulated ; and therefore the heir, who in the present case succeeded to the land-estate *præceptione hæreditatis*, by a disposition, bearing love and favour, claiming over and above, from the younger children who succeeded to the moveables, his proportion of the said 12,000 merks, they found, That the claim was satisfied and extinguished by his succeeding to the land-estate. See APPENDIX.

*Fol. Dic. v. 2. p. 145.*

No 154.

Two persons being found conjunctly liable *ex delicto*, and one of them having furnished the other with a sum of money which he used in paying a composition, it was presumed not to be advanced by way of loan, but as the advancer's share of what they had been found liable in.

1745. January 29.

JOHN DUNCAN *against* JOHN YOUNG.

DAVID GIBB and James Keith having been prosecuted before the Justices of Peace of the shire of Kincardine, at the instance of John Williamson, brought afterwards an action of wrongous imprisonment, oppression, and damages, for the procedure had in that process, against the Justices, Clerk, Procurator-fiscal, and private party.

John Young of Stank, the Clerk, was entrusted by the rest of the defenders, as John Duncan this pursuer alleged, with the management of the cause, and obtained an interlocutor assoilzieing them all except Williamson, who was found liable.

A reclaiming bill was presented for Williamson, on which Mr Young impe- trated from him a disclamation of the process, and the LORDS having, on a suspicion which they entertained, examined into the manner of obtaining this, it