

No. 12. 1739, Feb. MARQUIS OF ANNANDALE *against* EARL OF HOPETOUN.

THE Lords granted certification. They were unanimous as to all the defences except that of the act of Parliament 1594. I thought Lord Hope was in the terms of that act. Monzie thought so too but did not vote. Some of the Lords thought the act concerned only procuratories where there were separate dispositions produced as the remote warrant of the charters. Others thought it concerned all processes and dispositions, but that Marquis George's possession could not be conjoined to make 40 years, but the vote was in general.—25th June 1735.

The Lords, 22d June 1736, altered the first part of the Ordinary's interlocutor, and found that notwithstanding the certification the debts of Marquis James may affect the estate of Annandale, but adhered to that part finding the articles onerous; but altered the last part, and found that upon the act 1695 there lies relief to the heir against the executry and other estate of the last Marquis.—6th July 1737, The Lords adhered as to the two first points.

These mutual bills and answers have on different accounts (chiefly for a full Bench) lain over these 12 months, and at last this day (6th July 1737) we unanimously adhered to that part of the interlocutor, 22d June 1736, finding the contract onerous. 2dly, We also adhered to that part, finding that notwithstanding the certification and decree of the House of Lords the onerous debts of James Marquis of Annandale may affect the estate of Annandale, *sed renit.* Royston, Minto, Drummore, Murkle. But we thought it not proper to determine the point of relief on the act 1695 till the relief upon the other grounds were at the same time determined, and therefore remitted both to Arniston in place of Newhall.

The point of relief competent to the Marquis against the Earl of Hopetoun, which upon 6th July last was remitted again to be heard by Arniston as Ordinary came this day, 31st. January 1738, on his report to be decided. The Lords found, that in so far as the Marquis is liable for this debt on account of the last Marquis's infestment he the Marquis has no relief, *renit.* President, Royston, Drummore, Strichen, *et me.* But in as far as he is liable on the act 1695 they found relief competent to him and adhered to the former interlocutor.

N. B. The case came by appeal before the House of Lords in February 1739, who found the contract gratuitous *quoad* the L.1250, and therefore found the Marquis not liable. They also affirmed the judgment, that onerous debts may affect the estate notwithstanding the certification, but found no relief competent to the Marquis, neither as liable on the 1695, nor the infestment, since the last Marquis burdened the heir with it.

No. 13. 1739, Dec. 19. JAMES RUSSEL *against* GORDON.

THE Lords found the bond *contra fidem tabularum*, and therefore not effectual even against the son during the existence of the wife or children. *Renit.* President and Drummore. Indeed Arniston thought it would not be effectual even against the son after the dissolution of the marriage without children, because it was a sort of concussion upon