House of Lords found the contract onerous as to the interim rents of L.450, and the Marquis liable for them. They affirmed the interlocutor, that onerous debts of Marquis James may affect the estate of Annandale, but found the Marquis had no relief against the executry or separate estate, neither as liable on the act 1695, nor on the last Marquis's infeftment, since the last Marquis burdened expressly the heir with it. No. 12.

1739. *December* 19. JAMES RUSSEL *against* GORDON.

A FATHER having settled the terms of his son's marriage-articles, but forgot to provide for his younger children, though he was to give his son all his estate, wrote to his correspondent and to his son before the contract, that he behoved to secure them in L.20,000 Scots, but seemed afraid to make it known to the bride's friends, least they should be startled, and therefore it was not told them; but the son having agreed, the contract was signed in terms of the first proposals, and some days after the son granted his bond to the younger children *nominatim*, payable after his father's death for such shares of the L.20,000 as the father should appoint to each, at least so much thereof as should not be paid by the father in his own life, or by what should be left or fell to them at his death; but some time after the father gave up this obligation to the son after one of the children had privately registrated it in the register of probative writs. The Lords found the transaction *contra fidem tabularum*, and therefore not effectual even against the son during the existence of the wife and children. 2*dly*, That there was no *jus quæsitum* by it to the children, and that the father might give it up. *Vide* Hamilton against Hamilton, *voce* PROVISION TO HEIRS AND CHILDREN. No. 13.

1739. *December* 21.

CAPTAIN CHARLES and MARY CAMPBELL *against* ELIZABETH CAMPBELL.

THE Lords found that Colonel James Campbell being bound by his contract of marriage to secure 40,000 merks, and the whole conquest to himself and his spouse in conjunct-fee and liferent, and to the bairns of the marriage in fee, that each of the children are entitled to a share of the said special sum and conquest, and that the Colonel's taking his whole land- No. 14.

No. 14. estate and disponing his whole moveables to his eldest son, one of the said children, was not a legal implement of the above provisions; but found that the Colonel had a power of division of the sum and conquest so provided amongst his children in such manner as might be found rational; and therefore found he might lawfully acquire a land-estate and take the right thereof to his eldest son, and might also dispone his moveable estate with the burden of rational provisions to his children; and found that as the Colonel had himself the power to settle and determine the extent and proportions of the provisions to the younger children, he might likewise commit that power to any other person; and found that the Colonel having by his bond of provision 16th January 1713, obliged himself in the event therein mentioned, to pay to his younger children such sums as the Duke of Argyle and Earl of Ilay, or survivor of them should appoint, that power was a lawful power and does still subsist, and therefore superseded further proceeding till the 5th June, that in the mean time either party may apply to them to determine, or declare their not acceptance of that power, 16th (*apud me* 15th) December 1738; 5th January 1739, and they having declined to execute these powers, the Lords found that their powers are not devolved on this Court *tanquam boni viri*, and that the Colonel having settled his whole estate on his eldest son without making effectual provisions for his younger children, his settlement is reducible, and the pursuers are each of them entitled to an equal share of his estate in the terms of the contract.

1739. *December* 14. ALISON PRINGLE *against* THOMAS PRINGLE.

No. 15. A HUSBAND in his contract of marriage obliged himself to provide certain sums of money to the children of the marriage according to their number, to be divided as he should think fit, in satisfaction of all they could crave of him, except his own good will, and except what shall accresce to them as heirs and nearest of kin to him in case he shall not have children of any other marriage. The father afterwards disponed his estate for love and favour and other onerous causes to his eldest son, reserving his liferent and ample powers to burden or sell. He also provided his two younger sons, and got their discharges of all they could claim. And after his death, his only daughter unprovided claiming the executry from the eldest son who had intromitted with it, he proponed compensation or retention for his share of the sums provided by the contract to the children