

No 28.

fore the money would have been refused to have been paid in that case to her husband, as in this it is to the factor.

THE LORDS refused the bill.

One of the LORDS *observed*, That Mr Murray being a party to the deed, the factor was appointed with his consent ; and therefore there was no place for all these questions. See HUSBAND and WIFE.

Reporter, Lord Minto.

Fol. Dic. v. 3. p. 127. D. Falconer, v. 1. p. 64.

No 29.

A contract, disposing to a wife the half of insight plenishing, household furniture, and other moveable goods, was found not to comprehend *nomina*.

1745. February 19.

MRS FRANCES KER *against* JOHN YOUNG.

FRANCES KER relict of William Lindsay of Wauchop, writer in Edinburgh, pursued John Young writer there, her husband's executor and trustee, for that by their contract of marriage, he had disposed to her, in case she survived him, ' the just and equal half, and if there were no child of the marriage in life at ' his death, the whole of the insight plenishing and household furniture, and ' other moveable goods that should be in his possession, or in common betwixt ' them the time of his decease, if he should be the first deceiver.

The question was, Whether such *nomina* as fall under the communion between man and wife, were due to the pursuer in virtue of this clause?

THE LORDS found *nomina* not comprehended.

Reporter, Lord Monzie.

Act. A. Macdowal.

Alt. Monrief.

D. Falconer, v. 1. p. 79.

1746. December 24.

MARGARET CRAWFORD and COCHRAN her Husband, *against* HOGG.

No 30.

A wife, in her contract of marriage, renounced all she could claim thro' her husband's decease.—She predeceased him.—Found, that her provisions were in lieu of all claims, whether she survived or predeceased her husband ; therefore, her nearest of kin could not

In the contract of marriage between William Hogg, senior, merchant in Edinburgh, and Anna Crawford, William Hogg became bound to employ 2400 merks of his own money, together with 7000 merks contracted to him in tocher, upon land, or other security, to himself and his spouse in conjunct fee, and to the children of the marriage ; and after certain other provisions with respect to the conquest, and to the household furniture, in the different events of children, or no children of the marriage, there followed a clause of acceptance in these words : ' And which she, with consent foresaid, hereby accepts of in full ' satisfaction of all further liferent, terce, moveables, or any other manner of ' way through her said promised husband's decease.'

Anna Crawford predeceased her husband ; and, after his death, a process was brought before the Commissaries of Edinburgh, against Mr William Hogg junior who succeeded to him, at the instance of Margaret Crawford, sister and near-

est of kin to Anna Crawford, with concurrence of her Husband, to account to them for the half of the moveable estate, which belonged to William Hogg senior at the death of his wife.

And the defender having put his defence upon the foresaid clause of acceptance in satisfaction, the Commissaries 'having considered the contract of marriage, and ample provisions therein in favour of Anna Crawford, sustained the defence, and assoilzied.'

Whereof the pursuers having complained by bill of advocation, the LORDS, on report, 'Remitted to the Ordinary to refuse the bill.'

The doubt lay on the construction of the last words of the clause, 'in and through her husband's decease,' which were pleaded by the pursuers to limit the acceptance to that event. But the LORDS considered, that wherever competent provisions are made for the wife, and accepted of in satisfaction of all further liferent, terce, moveables, &c. such provisions are always intended by the parties to be in satisfaction of all claim which the wife, or her nearest of kin, might have by the provision of law, whether she survive or predecease her husband; and that any dubiety, arising from the terms of such accepting clauses, is solely owing to the inaccuracy of the framer of the settlement; *2do*, That the clause in the contract includes both events, of her predeceasing, and of her surviving her husband: She renounces all farther claim she can have to moveables; and the claim of the nearest of kin, when she predeceases, is still a claim in her right. And as to the last words of the clause, 'or any other manner of way through her said promised husband's decease,' if once it is established that the renunciation of moveables in general comprehends both events, these words were superfluous, and may probably have proceeded from the ignorance of the writer, and, so far from implying any intention to restrict, may rather have proceeded from an over anxiety to comprehend every claim. Decisions were also referred to, where, in cases pretty similar, though not precisely the same, the LORDS had found the renunciation to comprehend both events, as *Boyse contra Sandilands*, July 12. 1701, Lord Fountainhall, v. 1. p. 119. *voce* GENERAL DISCHARGES; and the late case of *Thomson contra Laurie*, February 19. 1743, C. Home, p. 373. *voce* HUSBAND and WIFE.

Fol. Dic. v. 3. p. 128. Kilkerran, (HUSBAND and WIFE.) No 11. p. 264.

1752. July 23.

MARGARET OLIPHANT *against* His MAJESTY'S Advocate.

By contract of marriage dated in the year 1719, betwixt Laurence Oliphant of Gask and his wife, it was provided, 'That, in consideration the estate of Gask stood entailed to the heirs male of the body of the said Laurence; which failing, to the other heirs male; and that thereby the daughters were excluded; therefore the said Laurence binds himself and his heirs, that failing heirs male of that marriage, who should succeed to and enjoy the estate, so that the same should descend to another heir male; then, and in that case, to provide

No 30.
claim a share
of the goods
in-commu-
nion.

No 31.
A man, in his
contract of
marriage,
bound him-
self to provide
a sum to
daughters, in
case his es-
tate, which
was entailed,
should, by
failure of
certain heirs