

No. 13. 1750, July 18. SIR KENNETH M'KENZIE *against* SUTHERLAND, &c.

MRS EL. EDWARDS, last Lady Kinminnity, after her husband Kinminnity's death gave a bond for love and favour to her daughter (of a former marriage) for 4000 merks, payable at her marriage, with annualrent from 1723, if she should not be sooner married before that time, but under express condition that if she died unmarried, or if she married without her consent in writing the bond should return to herself. This bond she put in the hands of Sir Patrick Strachan of Glenkindy, her uncle, who at the same time gave another bond for the like sum, payable at marriage, and under condition of her marrying with the Lady's consent in writing. On the death of Kinminnity's son the Lady thought that a marriage betwixt the young Lady and Sutherland of Clyne would be reasonable, and gave encouragement to him; and he came in suit, but she insisted on a tailzie of the estate and certain other conditions wherein they did not agree, and the Lady made a runaway marriage by the advice of some friends. After some months the Lady was so far reconciled as to give and receive visits and to declare her inclinations to be yet kind to them if they would give her the management of the estate; but afterwards she married Sir Kenneth M'Kenzie and made over her claims on Kinminnity's estate, which have since been ascertained, to his heirs, in the ranking of the creditors. But they pleaded compensation on the 4000 merks bond, which we sustained 6th June last, and this day adhered notwithstanding not only there was no consent in writing by the Lady, but pretty strong proof of dissent, *renit.* President, Woodhall, *et me.*

No. 14. 1751, Nov. 8. WILLIAM GRAY *against* SMITH AND BOGLE.

19th September 1671, James Calbarns disposed five acres of land to his wife Johnston in liferent, and to his son Thomas and his issue, whom failing his son James and his issue, whom failing to his own other issue, whom failing to his wife's children of any other marriage, but without any procuratory, and died sometime of that month of September, as appeared by his son Thomas's service in 1692. After his death the wife married Skirvine and by him left a daughter and died 1674; and James Calbarns seems to have had no near relation but one sister. As Thomas was under no limitations, and the disposition could not be executed without assigning and adjudging, Thomas in 1692 served heir on the former investitures, and appears to have been in perfect friendship with Skirvine his stepfather and his daughter Thomas's half-sister, and left him a legacy of 2000 merks to himself, and a valuable part of his personal estate in trust for his daughter and her children, particularly her son William Gray pursuer. In 1702, James Calbarns was served heir on the old investitures to Thomas, and, as he was exceedingly weak, in 1705 interdicted himself to Robert and William Smith and their sons, or either of them; and in 1723 thereafter these interdictors stripped him of every valuable subject and debt owing to him, and which they uplifted in trustees' names; and Robert took a disposition to the five acres and was infest; and the poor man appeared from the proof, if not quite an idiot the very next degree to it; and in 1743 Robert being dead his son William got a new disposition of these five acres to which the other William consented as interdictor reserving the granter's liferent, and was infest, and entered into a minute of sale with Bogle. James Calbarns's