

No 32.

1760. *November 24.* FORBES *against* BADENOCH.

A PERSON bound himself, in his contract of marriage, to secure 6000 merks upon land, bond, or other sufficient security, and to take the rights in favour of himself and his wife, and the longest liver, in liferent, and to their heirs in fee. He purchased a small estate at the price of 6300 merks. The wife afterwards pursuing for deficiency of jointure, because the rent of the land did not equal the annual rent of 6000 merks,—THE LORDS found, that the obligation in the contract had been sufficiently implemented, and that the pursuer was not entitled to claim the difference.

Fol. Dic. v. 3. p. 127.

1763. *February 24.*LACHLANE M'KINNON of Gambole *against* JOHN and ALLAN M'DONALDS.

No 33.
A contract of marriage, where the provisions proceeded upon supposition of the husband's predecease, found to exclude the wife's nearest of kin from any claim, on her predecease. See No 30. p. 2274.

IN April 1757, a contract of marriage was entered into betwixt Penelope M'Donald, sister to the defenders, and Lachlane M'Kinnon of Gambole. By this contract, the wife was provided, in the *first* place, in an annuity of L. 100 Scots during her life, in the event of surviving her husband; she was also provided to a third of the moveables; further, she was provided in the sum of 2000 merks money, in case the marriage should dissolve within year and day by the death of the husband; then followed provisions to the children of the marriage; after which, the wife was provided to half the conquest, all the sheep and goats, and the best horse, in case of surviving her husband.

The wife's tocher was 1000 merks, for which she assigned to her husband, her brother Allan M'Donald's bill.

The marriage subsisted about three years, when the wife died without children. And Mr M'Kinnon brought a process against John and Allan M'Donalds, his wife's two brothers, for payment of her tocher, and for certain other claims which he had against them.

The defenders *pleaded*, That all the clauses in the contract proceeded upon the supposition of the husband's predecease; but that no provision whatever had been made upon the supposition of the wife's predecease, which being the event that had happened, her share of the moveables devolved upon them as her nearest of kin; and that this share, which was in the pursuer's own hands, did more than compensate the claims he had against them.

This cause came before Lord Kames, who ordered memorials, in order to report it to the Lords.

Pleaded for the defenders, That the wife's share of the moveable estate cannot be taken away, but by an express renunciation. In the eye of law, the wife has an equal share in the communion of goods with the husband; and, as to that