

1765. February 15. MRS ANN MACDONALD *against* CHARLES MACKINNON.

No 35.

A jointure provided by the actual heir in possession, good against the estate.

JOHN MACKINNON, tacksman of Mishinish, married Ann Macdonald, daughter of Donald Macdonald of Benbecula, and, by postnuptial contract, provided her, in the event of her survivance, in a life-rent-annuity of 200 merks.

During the marriage, Mishinish acquired the possession of the estate of Mackinnon, in the manner explained in the preceding decision. And, upon the narrative, that a small additional tocher had been paid him; he provided her in the locality of certain lands, part of the estate of Mackinnon.

After the death of Mishinish, an action was brought by his widow against Charles Mackinnon, now of Mackinnon, for the mails and duties of her locality lands.

Sundry objections were pleaded to the titles produced by the pursuer; but what the defender relied on, was the general argument of the defect of power in Mishinish to burden the estate.

“THE LORDS repelled the defences.”

Act. Montgomery, Wight.

Alt. Burnet.

G. F.

Fac. Col. No 2. p. 198.

1771. February 25.

* * * This and the preceding case having been appealed, the House of Lords ORDERED and ADJUDGED, That the appeal be dismissed, and that the interlocutors therein complained of be, and the same are, hereby affirmed.

1774. June 28.

CAPTAIN JOSEPH CAVE *against* The GOVERNORS of the Merchant Maiden Hospital of Edinburgh.

No 36.

The heir apparent of a person originally vested with a right of presentation to an hospital, by the deed of a third party, was found entitled without a service to present upon a vacancy.

ONE of the patrons, having right of presentation to the Trinity and Merchant Maiden Hospitals in Edinburgh, was the deceased Joseph Cave, engraver to his Majesty's mint in Scotland, in consequence of a donation of the sum of L. 2000 Scots, made by Robert Murray merchant in Edinburgh, to each of the said hospitals, and particularly destined 'for alimending and maintaining, according to the rules and constitutions thereof, a young girl, to be presented by Mr Cave and his heirs to the Merchant Maiden Hospital, and a person to be by him and his heirs presented to the Trinity Hospital.'

The said Mr Joseph Cave (whose presentations, while he lived, were regularly admitted), having died in bad circumstances, none of his children inclined to represent him. His eldest son, Dr James Cave, however, (it was said), granted a presentation, upon a vacancy happening in the Trinity Hospital, in