

1776. July 30.

LAMOND *against* LAMOND.

No 120.

LAMOND, a shoemaker, by his marriage-contract, bound himself to settle his whole heritage and moveables on himself and spouse in conjunct fee and life-ferent, and to the heirs and bairns of the marriage in fee, and to do no deed to prejudge the children of their said right. He left a son and four daughters; three of whom having married with his consent, he gave them tochers, and received their discharges of all due them under the contract. The fourth daughter having married without his consent, received nothing; but, at her father's death, she claimed her provision as a bairn of the marriage; and *insisted*, That two heritable subjects, of which her father had taken the rights of the one to himself and spouse in conjunct fee and life-ferent, and to his heirs in fee; and of the other to himself and spouse in life-ferent, and to his son in fee, should, along with the moveable succession, be subject to an equal division among all the children. *Urged* in defence, The father, notwithstanding the obligation in the contract, retained the power of division; and the destination of the heritage, in the title-deeds, was the most formal division possible with regard to it.—THE LORDS found, that the titles of the heritable subjects carry them exclusively to the son; but that the pursuer, as a bairn of the marriage, has a right to an equal share of the remainder of the estate.—See APPENDIX.

Fol. Dic. v. 4. p. 191.

1797. June 20.

WILLIAM FOTHERINGHAM, and ALEXANDER HUME, his Tutor *ad Litem*,
against Colonel ALEXANDER FOTHERINGHAM OGILVIE, and Others.

No 121.

IN 1742, Elizabeth Ogilvie of Balfour was married to Thomas Fotheringham of Powrie. By the contract of marriage, the latter became bound to settle his estate of Powrie on the heir of the marriage; and the Lady, 'In contemplation
' of the said marriage, disposed her estate of Balfour to herself, and the said
' Thomas Fotheringham, her future husband, in conjunct fee and life-ferent, for
' the said Thomas Fotheringham his life-ferent use alienably, and to the second
' son of the present intended marriage betwixt them; which failing, to the
' third, fourth, and other younger sons to be procreated betwixt them, in their
' order, successively; which failing, to the eldest son to be procreated of the
' said marriage betwixt them, under the condition of his being obliged to de-
' nude in manner after expressed; which failing, to the heirs-male of the body
' of the said Elizabeth Ogilvie, by any subsequent marriage; which failing, to
' the heirs-female to be procreated of the said intended marriage; which all
' failing, to the said Elizabeth Ogilvie, her heirs and assignees whatsoever; the

An heiress, in her marriage-contract, settled her estate on the second son of the marriage, under an obligation to de-nude in favour of the immediate younger, in the event of succeeding to the father's estate. She thereafter granted a disposition of the estate to