

## DIVISION III.

## Apparent Heir three years in possession.

1707. July 1.

WALTER SYMPSON, Servant to Robert Boyd, Writer in Edinburgh, *against*  
JEAN HAMILTON, Daughter to Claud Hamilton of Garrin.

IN the competition betwixt the said Walter Sympson and Jean Hamilton, the LORDS found that an adjudication against an apparent heir for his own debt, who had been three years in possession but never infeft, is not sufficient to prefer the adjudger in a competition for mails and duties with one deriving right by dispositions from persons infeft as heirs-portioners to the remoter predecessor last infeft; without prejudice to the said adjudger to pursue these heirs passing by their immediate predecessor to make them personally liable for his debt, as accords in the terms of the act, 24th Sess. 5. Parl. William and Mary. (1695.)

*Fol. Dic. v. 2. p. 40. Forbes, p. 175.*

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1724. January 17.

AGNES MUIRHEAD *against* DAVID MUIRHEAD.

THE investitures of the estate of Drumpark, standing in favours of heirs-male, John Muirhead apparent heir of that estate, *anno* 1697, in his contract of marriage with Agnes Welsh, proceeding upon the narrative, that he was not infeft, 'obliged himself to provide the lands, in case of no male children of the marriage, in favours of the female children, and to grant all writs and securities requisite thereanent.' John died uninfeft, leaving a daughter, Agnes, only child of the marriage; whereupon David Muirhead, heir-male of the investiture, passing by John, was served heir to the last infeft, and expedite a charter and infeftment; against whom Agnes insisted in a declarator of her right by the said contract of marriage, upon the 24th act, Parl. 1695, her father, apparent heir, having been more than three years in possession.

It was *pleaded* for the defender, That the act of Parliament respects only onerous *debts* and *deeds*; to secure which only, was the act introduced; and as gratuitous alienations are not favourable, *in dubio* they will never be understood to be comprehended.

It was *answered*, That provisions and conveyances in contracts of marriage, are both favourable and onerous; so far from gratuitous, that they tie up the husband from making gratuitous deeds in their prejudice; and the words of the act being general, *viz. debts* and *deeds*, since it is even a question, whether

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One passing by an apparent heir three years in possession, is liable to implement the apparent heir's rational deeds in his contract of marriage.