

1738. *July 17.* SIR RODERICK M'KENZIE *against* CHRISTIAN MONRO.

THIS case is reported in Fol. Dict. 1—70, (*Mor.* 958.) where the facts are stated. Lord Kilkerran's note of the decision is as follows.

“The Lords were of opinion, that where a wife was provided to an annuity, &c. by her contract of marriage, the husband thereafter granting her an infeftment on a subject, though bearing love and favour, and no way referring to the implement of her contract, but, as here, expressing that it was over and above, or besides it, that the husband could not revoke it, and consequently his creditors not reduce it, it was used by her as a security for the provision in her contract of marriage, in other words, that she might retain it for security of the provisions in her contract, and on that ground found it as above, not reducible.

“To this only one of the Lords moved an objection in the reasoning. Should a personal creditor in a ranking, who had, subsequent to his personal debt, obtained an heritable right, for love and favour, insist upon such heritable right in security of his personal debt, he could not be heard; and the case was similar. But the answer was, that the cases were very different, for that in all provisions in contracts of marriage, there was, if not expressed, which was usual, there was implied an obligation upon the husband to secure such provision to the wife; wherefore, every security thereafter granted, however the husband should think fit to express it, might, by the wife, be applied to the security of the provision in her contract of marriage.

“The Lords pronounced a new interlocutor (for the ground on which it was laid by the Ordinary was not to the case), and found the wife's infeftment not reducible.”

1738. *June 13.* ANDREW ROWAND *against* WILLIAM LANG.

THE circumstances of this case, and the arguments on both sides, are stated in the report of it, by C. Home, (p. 148, *Mor.* 11,041.) It is also reported by Elchies, (*Cautioner*, No. 8.)

Lord KILKERRAN'S note is as follows :—

“The case of Hunter and Muir was just this: Samuel Muir, as principal, and John Muir, his father, as cautioner, granted bond, 21st May, 1701, to Mr. John Thomson, schoolmaster at Kilmarnock, for 3000 merks. James Hunter, as assignee to 800 merks of that sum, pursued Robert Muir, as representing his father, the cautioner, upon the passive titles. Against which process Robert propones his defence on the act 1695. ANSWERED Hunter, that within seven years of the date of the bond, viz. the 2d May, 1708, the same was registrate in the town court books of Air; and on the 19th of said month, two days within the seven years, a charge was given to the now deceased cautioner by a town officer; by virtue of a precept on the registrated bond, which perpetuate the obligation for what fell due within the seven years; which the Lord Ordinary sustained, and the