No. 14. estate and disponing his whole moveables to his eldest son, one of the said children, was not a legal implement of the above provisions; but found that the Colonel had a power of division of the sum and conquest so provided amongst his children in such manner as might be found rational; and therefore found he might lawfully acquire a land-estate and take the right thereof to his eldest son, and might also dispone his moveable estate with the burden of rational provisions to his children; and found that as the Colonel had himself the power to settle and determine the extent and proportions of the provisions to the younger children, he might likewise commit that power to any other person; and found that the Colonel having by his bond of provision 16th January 1713, obliged himself in the event therein mentioned, to pay to his younger children such sums as the Duke of Argyle and Earl of Ilay, or survivor of them should appoint, that power was a lawful power and does still subsist, and therefore superseded further proceeding till the 5th June, that in the mean time either party may apply to them to determine, or declare their not acceptance of that power, 16th (*apud me* 15th) December 1738; 5th January 1739, and they having declined to execute these powers, the Lords found that their powers are not devolved on this Court *tanquam boni viri*, and that the Colonel having settled his whole estate on his eldest son without making effectual provisions for his younger children, his settlement is reducible, and the pursuers are each of them entitled to an equal share of his estate in the terms of the contract.

1739. *December* 14. ALISON PRINGLE *against* THOMAS PRINGLE.

No. 15. A HUSBAND in his contract of marriage obliged himself to provide certain sums of money to the children of the marriage according to their number, to be divided as he should think fit, in satisfaction of all they could crave of him, except his own good will, and except what shall accresce to them as heirs and nearest of kin to him in case he shall not have children of any other marriage. The father afterwards disponed his estate for love and favour and other onerous causes to his eldest son, reserving his liferent and ample powers to burden or sell. He also provided his two younger sons, and got their discharges of all they could claim. And after his death, his only daughter unprovided claiming the executry from the eldest son who had intromitted with it, he proponed compensation or retention for his share of the sums provided by the contract to the children

of the marriage; but the Lords found that the said son having succeeded to his father by disposition to his land estate, his share of the sums in the contract is satisfied and extinguished; and were of the same opinion though there had been no disposition, for they still looked upon it as a succession upon the children of the marriage;—but I think this was reversed in Parliament. (See NOTES.) (See DICT. No. 152. p. 11472.) No. 15.

1740. *June* 11.

JOHNSTON and CAPTAIN NAPIER, Her Husband, *against* JOHNSTON, LADY LOGAN.

No. 16.

A BROTHER giving a gratuitous additional pension of 7000 merks to a sister who had already a competent one of 8000 merks, payable the first term after her marriage, but to return in case of her death without children existing at the time of her death, she assigned both provisions to her husband in the contract of marriage, who pursued for payment. In respect that from the circumstances, it appeared that the brother intended that the additional sum should return in case of no children, notwithstanding his sister's marriage, and that it should not be disappointed by her marriage, found the clause of return effectual notwithstanding the contract, and that her husband and assignee should on payment find caution to repeat upon the conditions existing.

1740. *November* 6. JACK *against* HOOD.

No. 17.

A FATHER became bound in his son's contract of marriage to pay his son a sum of money, and the wife to pay him her tocher, and the son bound to employ a certain sum for the uses therein mentioned, after which the father died, and after him the son within year and day of the marriage, and without making up titles to his father's means;—but he made over his father's obligement for the 2000 merks to his wife. The Lords found that the dissolution of the marriage within year and day voided the contract not only as to the two spouses; but likewise as to the father's obligement as to the son, and found the son's assignation to his wife ineffectual, 6th November 1739. But this altered;—*quod vide*, with the prints and observations on them. (See NOTES.) (See DICT. No. 383. p. 6175.)