

No 95.

his whole stock upon land, and thereby render him unable to carry on his business, or even to live comfortably, far less to make any conquest, which yet was in view, because it also was provided to the children of the marriage; the LORDS were sensible, that the demand was rigorous, but they would not take it upon them to relieve the suspender against an express obligation, and therefore found the letters orderly proceeded. See APPENDIX.

*Fol. Dic. v. 2. p. 285.*

No 96.

1738. July 7.

DRUMMONDS *against* DRUMMOND.

PROVISIONS to daughters failing heirs-male are not due, if an heir-male survive the granter ever so short a time.

*Kilkerran, (PROVISION TO HEIRS AND CHILDREN.) No 1. p. 455.*

No 97.

1745. July 16.

DEANS'S *against* LOCKHART.

Children having bonds of provision, with a clause that what they should have at their decease should fall to their elder brother, have the *jus exigendi*.

THE children of Deans of Woodhouselee having bonds of provision secured on the estate, sold them to George Lockhart of Carnwath; and insisting for the price, he suspended, for that they could not convey to him their bonds, since it was expressly provided, that in case any of the children should die before they were married, their portion, or what they should happen to have at their decease, should fall and be paid to their eldest brother, heir to their father.

It was *urged*, That notwithstanding this clause they had the *jus exigendi*.

THE LORDS refused the bill.

*D. Falconer, v. 1. p. 122.*

No 98.

1758. June 20.

MARY MACDONELL *against* HIS MAJESTY'S ADVOCATE.

Provisions to daughters contained in a marriage contract, when due?

By contract of marriage in 1730, between Archibald Macdonell of Barisdale and Isabel Mackenzie, the said Archibald, and his eldest son of a former marriage, Col Macdonell, became jointly bound in favour of the daughters of the marriage, in these words: "And in case there be only daughters procreate of the said marriage, and no heirs-male existing, then, and in that case, they, the said Archibald and Col Macdonells, hereby provide the said daughters as follows, viz. if there be only one daughter, to her the sum of 1000 merks Scots; and if there be two, three, or more daughters, to them all the sum of 3000 merks, whereof a double portion to the eldest, and the remainder to the younger, equally betwixt them; and in case of the decease of any of them, the portion of the daughter deceasing after dissolution of the said marriage, to fall and accresce to the surviving daughters, equally betwixt them; and which portions