

1741. *February 24.* JOHN LILLIE *against* WALTER RIDDELL.

No. 7.

A FATHER in his son's contract of marriage having disposed lands to his son in liferent, and to the bairns to be procreated of the marriage in fee; the son was found to be fiar, as had been found in the case of Frogg, marked in the preceding page, (No. 4.) (See DICT. No. 56. p. 4267. and DICT. No. 63. p. 12915.)

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1747. *February 6.* SCOTT of Harden *against* CHRISTIAN RIDDELL.

No. 8.

A BOND of 1200 merks bearing receipt of the money from a man and his wife, and payable to them in conjunct fee and to the longest liver, and to their heirs, executors, and assignees, *proviso*, that notwithstanding the said fee, yet the fee of 500 merks should be at the disposal of the husband, and 700 at the wife's disposal by a writing under their hands, but that it should not be lawful to the husband to uplift, assign, and discharge any part without advice and consent of the wife;—the wife survived, and died without uplifting or disposing; and her executors suing for payment, the debtor pleaded compensation on a debt of the husband's for 700 or 800 merks. The husband's executors also claimed the whole, because they said he was fiar, and the wife had only a faculty to dispose. Some thought that the wife by her survivance was fiar *jure accrescendi*, or *non decrescendi*; others, that the presumption was, that 500 merks of the money was the husband's, and 700 the wife's, and therefore that they were fiars by that proportion; but at any rate, that the wife was at least *nominatim* substitute, and in case of her survivance, her heirs, and the husband was disabled to prejudge as to 700 merks. We thought it unnecessary to determine the abstract question in whom the fee was, but we preferred the wife's heirs, and sustained the compensation only to the extent of the 500 merks. (See DICT. No. 10. p. 4203.)

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1750. *June 27.*

CLAIM, ALEXANDER HAY, on the Estate late of JOHN HAY.

No. 9.

By the marriage-contract betwixt John Hay and Ann Elphingston, she disposed certain lands to him and her in conjunct fee and liferent, and to the heirs of the marriage in fee, whom failing, to his heirs and assignees, and made over to him a considerable estate, and other subjects, which he became bound to employ on land, or bond bearing annualrent, to himself in liferent, and to the heirs of the marriage in fee, whom failing, to his

No. 9.

own heirs and assignees, with certain powers and faculties over this last mentioned subject to the wife, in case there were no heirs of the marriage. She died before the rebellion, and he being now forfeited, his son claimed the whole, either in his own right, or as heir to his mother, and insisted that the land-estate flowing from her, she remained fiar by the contract ; but we dismissed the claim as to both branches of it.

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1750. July 18.

CREDITORS of ROBERT ROBERTSON, *Competing, i. e.* MARGARET SIMPSON *against* WALTER WORDIE.

No. 10.

By a postnuptial contract of marriage, the two fathers of the bridegroom and bride disposed their respective small heritages to them. The husband's father's estate was provided to the two spouses in conjunct fee and life-rent, and the bairns of the marriage in fee, whom failing, to the husband's heirs ; and the bride's father's also to the two spouses in conjunct fee and life-rent, and to the bairns of the marriage in fee, whom failing, to the bride's heirs ; and as he had another daughter, he took a bond from the two spouses for L.50 sterling, as I suppose, as the half of the computed value of his heritage ; and the two fathers gave the two spouses 4000 merks more. In a sale of the husband's estate, the wife was found to be fiar of the subjects conveyed by her father, which were thereby ordered to be struck out of the sale ; and the separate tocher in money had some influence in the decision. (See DICT. No. 12. p. 4207.)

See NOTES.