No. 15. 1752, July 10. JAMES LORD DRUMMOND *against* LADY J. GORDON.

BY marriage-contract betwixt James Lord Drummond and Lady Jean Gordon in 1706, there is a provision to the daughters of the marriage, upon the narrative that the estate was by the old investitures provided to heirs-male, whereby if there should be daughters they would be secluded from the succession, therefore obliging the father to pay to the said daughters, if one 40,000 merks, if two or three or more, larger sums, at their age of 18 or marriage, which of them should first happen, after dissolution of the marriage, with an obligement on the daughters to make over to the heirs-male whatever they could succeed in as heirs of line or nearest of kin. On this clause she entered a claim on the estate forfeited by the attainder of her brother, commonly called Lord John Drummond, for the 40,000 merks and interest since the year when she was 18 years old. Alleged, That this was no more than the common clause used in all contracts of marriage in Scotland, especially in male fees, providing portions to daughters in case there be no heirs-male of the marriage, and therefore contains no provision to younger sons, and supposes that these daughters were to be heirs of line, and therefore not payable even at their marriage, if the father's marriage still subsisted, because there might be yet heirs-male of it; and the provision is to the said daughters, that is to daughters secluded by the destination of succession to heirs-male; and that such clauses were always so understood in Scotland, and so judged when made a question, and quoted the case of Turnbull of Currie, 17th June 1724, observed by Edgar* and of Captain Peter Halket 27th November 1733; and showed that both father and mother, and all the friends of the family so understood this clause in the father's settlement of the estate in 1713 on his eldest son James, afterwards commonly called Duke of Perth; and upon the father's attainder, when no claim was entered for this portion, though claims were entered by all the creditors, by the mother's purchasing debts of the family in this claimant's name to the extent of L.1500 sterling, which her brother corroborated, and which she also claims, though the mother had then two sons and the second unprovided; and the claimant herself never before claimed this as a debt from her brother, and therefore now claims 27 years interest all yet resting; and that the condition hath not existed, because two sons survived the father, whereof the eldest enjoyed the estate many years till his death under the said settlement 1713. Answered, The obligation is pure and absolute and not conditional,—that *causa legandi legato non cohære*,—and that where no condition is expressed, we cannot imply one; that the claimant knew not the terms of the contract till lately, and is not bound to account for the neglect of her friends in her infancy. The Lords on a division seven to six sustained the claim, *renit.* President, Duke of Argyle, Kilkerran, Justice-Clerk, Leven, *et me.* For the interlocutor were Minto, Drummore, Strichen, Kames, Murkle, Shewalton, Woodhall. I should have noticed that the claimant quoted the case of Anderson's Daughters, 13th February 1722, affirmed in Parliament, and of the Daughter of Hamilton of Reidhouse, 15th June 1743, also affirmed in Parliament; and printed copies of these precedents were given in signed by counsel on both sides. This decree afterwards reversed in Parliament.

* DICT. No. 87. p. 452.