

No 123.

computed for absorbing of the said 12,000 merks, as well those which her father was obliged by the said bond in 1626 to dispone to her, as the rest not mentioned therein. And having considered the probation as to the worth and value of the tenements and acres, they find the same, deducting the liferent, to have been worth 10,000 merks, the time of the said Margaret Crawford's contract of marriage; and therefore sustain Thomas Young's diligence as to 2000 merks of principal, and a proportionable part of the penalty of the said 12,000 merks bond effecting to 2000 merks; which 2000 merks the LORDS find the said tenements and acres were short in value of the 12,000 merks contained in the bond of provision granted to the said Margaret Crawford; and that the tenements and acres stand affected therewith; and reduce the said Thomas's rights and diligences as to the superplus more than the said 2000 merks." So that, upon the whole matter, they found in this case, as it was circumstantiate, that the father being his daughter's creditor ob bona materna non præsuebatur donare by his second provision in her posterior contract matrimonial, but rather *debitum dissolvere*. Yet the maxim holds in other cases, 23d Feb. 1682, Forbes, (see APPENDIX.) 24th July 1623, Stewart, No 116. p. 11439.

Fountainhall, v. I. p. 34. & 164.

* * * See No 157. p. 11476.

1706. July 19.

EDMONSTON *against* EDMONSTON.

No 124.

AN obligation in a contract of marriage, to provide a certain sum to the granter and his spouse in conjunct-fee and liferent, and to the children of the marriage in fee, implies a discretionary power in the granter to provide the subject among his children, giving to one more and to another less.

Fol. Dic. v. 2. p. 289. Forbes.

* * * This case is No 45. p. 3219. *voce* DEATH-BED.

1724. July 10.

JAMES DOUGLAS, eldest lawful Son to the deceased John Douglas of Tilliwhillie, *against* JOHN DOUGLAS the second Son.

No 125.

In a contract of marriage, the estate being provided to the heir of the marriage; if in any case the father can pass by the heir, and give the estate to another son of the marriage?

JAMES DOUGLAS of Inchmarlo, in his son John Douglas's contract of marriage, settled the lands of Inchmarlo, "upon him and wife in conjunct fee and liferent, and to the heirs-male to be procreated of the marriage." Of this marriage were two sons, James and John, the parties in this debate; the eldest of whom, James, for his weakness and folly, was neglected by his father; who, notwithstanding the provision in his contract of marriage to heirs-male, settled the estate upon John, second son of the same marriage. Of this settlement James raised reduction, after the father's decease, upon this *medium*, That it was *ultra*