

1743. *January 20.* LAURIE *against* ———.

[C. Home, No. 229.]

THE Lords sustained the claim of the executors by the President's casting vote. *Dissent. Arniston.*

This interlocutor was altered, upon a reclaiming bill, by a considerable majority. Adhered to the alteration, December 12, 1743.

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1743. *February 1.* JEAN and ANNE DALLASES *against* GEORGE DALLAS.

IN a contract of marriage, the father of the bride bound himself to pay a sum of money, to the husband and wife in conjunct fee and liferent, and to the heirs whatsoever of the marriage.

The Lords unanimously found,—That the money belonged to the heir, and did not divide equally among all the children. Notwithstanding that, it was argued,—That heir-whatsomever is variously understood, according to the nature of the subject; and that here the subject was a moveable sum, and therefore, by heir-whatsomever, ought to be understood *hæres in mobilibus*, the executor: that there was a *mutatio stili* in the contract, which favoured this interpretation; for, in the clause before, the land estate was provided to the heir-male of the marriage; and, in this clause, the money is provided to the heir-whatsomever, which must be supposed to mean a different person, and not even the heir of line, but the whole children.

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1743. *February 4.* PEADIE *against* PEADIE.

[Kilk., No. 2, *Heirs-Portioners*; Elch., No. 1, *ibid.*; C. Home, No. 226.]

IN this case, the Lords found that the principal messuage, though neither tower nor fortalice, belonged to the eldest heir-portioner as a *præcipuum*, without any recompense or equivalent to the rest. Here it was allowed by both parties, *imo*, That a tower or fortalice went to the eldest heir-portioner without any recompense, because towers and fortalices are considered as accessories of the jurisdiction, *Instrumenta Jurisdictionis*, as Craig expresses it. Besides, towers and fortalices were *inter regalia*; they belonged to the King, who had a right to use them at any time for the defence of the country, so that the private persons who dwelt in them were little more than heritable keepers of them; and as it required a considerable expense constantly to keep them in repair, for that reason they were adjudged to the eldest heir-portioner with-