

No 56.

p. 11567. Nor is the Child of the second marriage in any better case than the other Children; because, a contract of marriage doth not take the fee from the father, or hinder him to contract debt, November 21st 1682, The Creditors and Children of Mr Andrew Marjoribanks, No 48. p. 12891.; but is only designed to regulate the succession of the Children of the marriage, with relation to themselves or to children of other marriages.

THE LORDS preferred onerous Creditors to the Children, in respect the father was fiar, notwithstanding the bonds of provision and contract of marriage.

*Fol. Dic. v. 2. p. 281. Forbes, p. 372.*

\* \* \* See a subsequent branch of this case, as reported by Forbes, and Fountainhall's report, No 9. p. 47., *voce* ADJUDICATION.

1711. July 12.

MR ROBERT BLAW, Schoolmaster in Edinburgh, *against* His FATHER.

No 57.

A father found to be *vergens ad inopiam*, so as to induce an adjudication in security gainst him; because he had granted bonds of provision to his children, which would exhaust his funds.

MR ROBERT BLAW having pursued an adjudication against his Father, upon a bond granted to him by his Father, for borrowed money payable at the Father's decease, upon this ground, that the Father was *vergens ad inopiam* by granting a bond of provision to his younger children, that would exhaust all his effects;

*Alleged* for the defender; There can be no adjudication in this case, for the sum in the bond, whereof the term is not come. Because adjudications since the 1672 are come in place of apprisings, and such a debt for which a previous pouding could not be used, cannot be apprised for. *2do*, Property cannot be transferred without statute or custom, and there is neither statute nor custom for an adjudication of this kind. *3tio*, It would be inconvenient, in so far as, it would let all the Father's creditors loose upon him. And upon the same ground adjudication might be sought upon warrandice before eviction, upon relief without distress, and at the instance of wives and children upon contracts of marriage during the standing thereof.

*Replied* for the pursuer; Adjudication here is not craved upon the act 1672, but only an adjudication in security, whereof the legal doth not expire, introduced by custom from the analogy of the statute. So adjudications are allowed in favours of wives against their husbands, in implement of their contracts of marriage, albeit the term of payment was not come, or uncertain by the husband's surviving the wife. And my Lord Stair holds, B. 4. T. 51. § 9. That adjudication is competent for illiquid debts. In the Roman law *creditor in diem* might have had the benefit of *missio in possessionem*, especially where, as here, there was evidence of the debtor's growing poor. And for the same reason a pursuit for relief in such a case is competent with us to a cautioner before dis-

ress, or an action for implement upon a contract of marriage before the term. Is there not *par ratio* for granting adjudication in security in this case, as for granting arrestment upon a bond before the term of payment, till it be loosed upon caution?

No 57.

THE LORDS, upon report of the Lord Cullen, were clear, that decret of adjudication should be granted, in respect the defender was *vergens ad inopiam*; unless within a certain time he find sufficient caution to the pursuer.

*Forbes, p. 523.*

\*.\* Fountainhall's report of this case is No 57 p. 8149., *voce* LEGAL DILIGENCE.

1714. July 2.

Mr GEORGE ROME, Writer in Dumfries, *against* WILLIAM GRAHAM, SON to the deceased William Graham of Ingliston.

IN a reduction and declarator at the instance of Mr George Rome against William Graham, the LORDS found, that inhibition used upon a provision in a contract of marriage, made by the husband in favour of the children of the said marriage before they were born, did not denude the father of the fee, or incapacitate him to traffic or contract lawful debts with extraneous persons, but only hindered him to do any fraudulent or gratuitous deed, in prejudice of the children of the said marriage.

No 58.

*Forbes, MS. p. 75.*

1724. January 24. LYON *against* CREDITORS of Easter Ogle.

A MAN, in his contract of marriage, bound himself to pay a certain sum to the daughters to be procreated, payable at their marriages, if in his life, or, in case of his predecease, upon their attaining the age of 18. The father falling into bad circumstances, a daughter, with concurrence of the friends, at whose instance execution was to pass, led an adjudication against the father's estate within year and day of his other creditors adjudgers; who, in a competition, *pleaded*, That provisions in a contract of marriage were of the nature of succession, and must yield to lawful debts; and likewise, that an adjudication upon an obligation, the term of payment of which was not come, could not compete with their bonds, to which the law allowed *paratam executionem*. THE

No 59.