

## SECT. XVI.

Powers of the Father where the Fee is provided by his marriage-contract to the Heir of the Marriage.

No 138.

1747. *January 23.* KER *against* KERS.

KER of Abbotrule, who had become bound in his contract of marriage to settle his estate, which was about 6000 merks a-year, upon the heir-male of the marriage, executed an entail thereof in favour of William his eldest son; in which, besides other unreasonable clauses, he imposed on him a strict prohibition, under an irritancy, to grant a jointure to his wife exceeding L. 20 yearly, or provisions to his children exceeding two year's rent. William Ker having pursued reduction of the entail against his own children, and the other substitutes, the LORDS found, That the entail contained clauses irrational, contrary to the marriage contract, and reduced.

*Fol. Dic. v. 4. p. 179. Kilkerran. D. Falconer.*

\* \* \* This case is No 116. p. 12987.,

No 139.

Destination inconsistent with a post-nuptial contract of marriage reduced.

1776. *July 9.* CUNNINGHAM *against* MYRTON-CUNNINGHAM.

SIR ROBERT MYRTON, in a postnuptial contract of marriage with his wife Dame Mary Campbell, provided the estate of Gogar, failing heirs-male of that or any other marriage, to the eldest heir-female; but reserving power to himself, on failure of heirs-male, and in case there should be two, three, or more daughters, to entail and settle the estate on any one of them, even in preference to the eldest; and Lady Myrton, on the other hand, conveyed her whole fortune to her husband. Of this marriage there existed only three daughters. The eldest died without issue; the second, Jane, married Fletcher of Salton, and left an only child, who survived her but a short time; and the third, Frances, after the death of her two sisters, was married to Sir William Cunningham of Livingston. Sir Robert Myrton, in the contract of marriage between his daughter Jane and Mr Fletcher, renounced and discharged his reserved faculty, both as to the power of entailing, and of preferring any younger daughter to the eldest; and he therein provides the estate of Gogar, failing his own heirs-male, to Mrs Fletcher and her heirs-male; failing whom, to his youngest daughter Frances, and the heirs whatsoever of her body, the eldest heir-female succeeding without division. In the contract of marriage betwixt