

for establishing the fee in his said children equally among them. And taking the case in that point of view, it was most unjustifiable in the eldest son, after making up a title in his own person as heir to his father, to attempt to deprive the pursuer of her just right, by conveying these subjects in the manner he did to his brother Thomas, and the two defenders, one of whom was not even born at the time when their father's settlement was made; and, as the defenders do represent their said eldest brother, it is but just and reasonable that they should be answerable to the pursuer for what he in that manner attempted to deprive her of.

No 158.

"THE LORDS find, that Helen Mearns, as one of the four children in the settlement, is entitled to a fourth share and proportion of the free price of the subjects as sold to John Veitch."

And afterwards refused a reclaiming bill without answers.

Act. *Wight.*

Alt. *Geo. Wallace.*

Clerk, *Ross.*

*Fol. Dic. v. 4. p. 188. Fac. Col. No 189. p. 115.*

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S E C T. XXI.

Provisions in a postnuptial contract, whether effectual to compete with onerous creditors?

1746. June 18. EXECUTOR OF MURRAY *against* MURRAY.

No 159.

A PROVISION by a father, in consideration of an additional tocher paid by the wife's father, made in a postnuptial contract of marriage, of a sum to the heir-female to whom the father's entailed estate was to descend, was reduced at the instance of prior creditors; and posterior ones whose money had been applied to the payment of prior debts:

*Fol. Dic. v. 4. p. 188. Rem. Dec. D. Falconer.*

\*\*\* This case is No 104. p. 990., *voce* BANKRUPT.

1754. July 2. STRACHAN *against* CREDITORS OF DALHAIKIE.

No 160.

JAMES STRACHAN, of Dalhaikie, in a postnuptial contract of marriage, bound and obliged him, his heirs, &c. to satisfy and pay to the children procreated,

The provision in a postnuptial contract

## No 160.

of marriage, obliging the husband ' to satisfy and pay to his son already procreated, and to his other sons that shall exist, the sum of 18,000 merks, together with half of the conquest,' imports only a provision of succession.

' or to be procreated of the marriage, the following provisions, viz. to the son already procreated, and to him and the other sons, in case others shall exist of the marriage, the sum of 18,000 merks; together with the just and equal half of all sums of money, goods and gear, whether heritable or moveable, which the said James Strachan should happen to conquest and acquire during the said marriage; and the said James Strachan became bound to satisfy and pay these provisions at the first term following his death, and that of Katharine Dunbar his spouse, with annualrent and penalty,' &c.

James Strachan having died insolvent, his only son Ludovick Strachan adjudged the estate for security of the said sum of 18,000 merks; and, in a ranking and sale, it was objected by the other Creditors, that he could draw nothing till his father's debts were paid.

" THE LORDS found, that the clause imported only a provision of succession."

It was *observed*, That the words ' to satisfy and pay' seemed to be improperly applied in this contract. With regard to the conquest to which they are applied, as well as to the liquid sum, they cannot be taken in their proper sense; but must mean only a provision of succession. And if the words must be confined to this sense with regard to one of the articles, a Judge cannot take upon him to give them a more extensive sense with regard to the other; especially where the consequence of such interpretation would be to put a gratuitous creditor upon an equal footing with one for a valuable consideration.

*Fol. Dic. v. 4. p. 188. Sel. Dec. No 64. p. 84.*

\* \* \* The Faculty report of this case is No 105. p. 996., *voce* BANKRUPT.

1771. *January 23.*

JAMES CHALMERS, Writer to the Signet, *against* ROBERT HAMILTON of Bourtriehill.

## No 161.

Provisions to children executed in consequence of a reserved faculty, and inserted as a burden on an heritable bond granted by the father to one of his creditors, found effectual against personal creditors.

HUGH MONTGOMERY of Broomlands granted a bond of provision, dated 18th February 1727, obliging himself, his heirs, &c. to pay to his spouse for her liferent, and to the heirs and bairns of the marriage in fee, 10,000 merks Scots.

Three daughters, Jean, Elizabeth, and Mary, and a son Charles, existed of this marriage; and by a deed, dated 24th July 1751, Broomlands gave and appropriated 2,000 merks of the said sum to his daughter Elizabeth, and the like sum to his daughter Mary, in satisfaction of all they could claim through his death.

By a deed, dated 10th June 1763, Broomlands disposed to his son Charles his whole estate, reserving his own liferent, the burden of his debts, a liferent provision to his wife, and the burden of making payment of 2,000 merks to each of his daughters Jean and Elizabeth, and the like sum of 2,000 merks to