

No 107. that period: Found that she is preferable to her husband's nearest of kin for the remaining L. 20 Sterling: Found that the pursuer is not entitled to mournings.'

A&. *Crosbie, Alexander Murray.*

Alt. *Macquern.*

*G. Fergusson.*

*Fac. Col. No 45. p. 272.*

1778. February 14.

JAMES CAMPBELL, and Others, against JANET SOMERVILL.

No 108.

A postnuptial grant of the liferent of a house, by a husband, *oboratus*, to his wife, found good against creditors, to the effect of securing her antenuptial provisions, in so far as the funds might be otherwise insufficient. If the funds should turn out sufficient for payment of the debts, the liferent was to remain as a separate provision.

ROBERT JAFFRAY, in his contract of marriage with Janet Somervill, became bound to provide her in an annuity of L. 25 Sterling, in case of her surviving. Soon after his marriage, upon a narrative of 'love and regard,' he executed a liferent-conveyance of a house in favour of his wife. Robert Jaffray died, in a few months after executing this deed, in Jamaica, leaving his affairs much involved. His effects in Scotland not being sufficient to pay his creditors, they brought a reduction of the forelaid disposition of the liferent of the house to the widow, upon the act 1621.

*Pleaded* for the pursuer:—Jaffray died insolvent, and was in the same situation at the time of granting this deed. Where a wife is otherwise unprovided, a postnuptial settlement in her favour will be good to the extent of a rational provision, even when the husband is *oboratus* at the time of granting it. But it will not be supported by the Court, if immoderate, against onerous creditors; Kilkerran, No 4. *voce* BANKRUPT, No 103. p. 988.; *Fac. Col.* p. 225. Noble against Dewar, 12th July 1758, *voce* TAILZIE; Erskine, b. 4. tit. 1. § 33.—In the present case the wife was provided in the contract of marriage. This ascertained what the parties considered to be reasonable in their circumstances. Every addition thereto, by a postnuptial deed, after the husband is *oboratus*, must be held as immoderate; *Fac. Col.* No 18. p. 32. February 7, 1761, Bruce against Glen, *voce* PROVISIONS TO HEIRS AND CHILDREN.

*Answered* for the defender:—There is no certain evidence of the husband's insolvency at the time of granting the deed. But, although he had been insolvent, this deed was granted for a just cause, and, therefore, is not reducible. It is only an addition to the defender's jointure, of a small house at L. 4 rent, in which to live with her family. This case, therefore, differs from those founded on by the creditors; in all of which the provisions were immoderate. The only question, with respect to such provisions is, Whether they are exorbitant or not? and it makes no difference, if they are moderate, whether they are additions to a former scanty provision by the marriage-contract, or granted when there has been no former provisions.

The Court found, 'That Janet Somervill's liferent-right to this tenement, is to remain in security to her of the annuity in her contract of marriage; but, referred to her, in case of her husband's debts being paid by the proceeds of his effects at Jamaica, or elsewhere, to claim the liferent-right as a separate provision.'

A&. *Matthew Ross.*

Alt. *Ad. Rolland.*

*Fol. Dic. v. 3. p. 51. Fac. Col. No 16. p. 29.*