

"THE LORDS found, That the pursuer, in virtue of the decret 1729, is entitled to the sum of L. 1000 Scots, as a part of the portion of 10,000 merks provided to her sister Elisabeth, by their father's contract of marriage, for which Elisabeth adjudged his estate in the year 1726; and that the pursuer is entitled to insist for a decret of mails and duties against the said tenements, for such part of the accumulated sums contained in the adjudication, as shall appear to arise from the said L. 1000 Scots, and interest thereof adjudged for; and decerned in the mails and duties accordingly."

No 99.

Act. *Ja. Fergusson, jun.*Alt. *Lockhart.*

G. F.

Fac. Col. No 35. p. 258.

1788. November 19.

OMEY against MACLARTY.

No 100.

CRAWFORD settled L. 600 on his grandson Omev, declaring that the interest should be paid from the grantor's decease till the grantee's marriage or majority; at which period the principal sum was to be paid. Omev having died before his majority unmarried, his next of kin claimed the money. THE LORDS found, That the provision lapsed by his death, and did not transmit to his heirs.

*Fol. Dic. v. 4. p. 185. Fac. Col.**.* This case is No 9. p. 6340. *voce* IMPLIED CONDITION.

S E C T. XIII.

What understood to be sufficient implement.

1626. November 29. SCOT and his Father against L. GALLASHIELS.

In the foresaid suspension at the instance of ——— Scot, son to the Laird Harden, and of the Goodman of Harden his father, against the Goodman of Gallashiels, who had charged Harden to employ upon land to his said son and his spouse in conjunct fee, who was Gallashiels' daughter, the sum of L. 10,000, conform to a contract of marriage betwixt the said parties, whereby Harden was obliged to pay the said sum to his said son, to be employed in manner foresaid by the sight of Gallashiels; Harden being charged to employ to the use of the longest liver of them two, as said is, produces a discharge, upon the

No 101.

Effect given to a charge to employ money for children, in terms of a contract of marriage.

No 101.

payment of the said sum to his son, to whom he is obliged to pay the same, and suspends thereupon; alleging that by the contract, he is only obliged to pay to him the same, which he has done, and so that he cannot be charged any further, seeing he is not obliged to employ, and that his son is the party who ought only to be charged to employ the same to his wife's use, who is responsible to do the same; and being charged will fulfil it. THE LORDS, notwithstanding of this reason, and of the payment made to the son, found the letters orderly proceeded against the father, aye, and while the sums were employed to the use of his son's wife in liferent, and found that he was not liberated by the said payment made to his son, in respect that the payment was appointed by the contract, to be made to his son for that end, viz. to be employed, &c. which the father should have caused to have been done, at the payment to his son, and which should have been done at Gallashiels' sight, otherwise the contract betwixt the father and the son might be easily elided in all such cases, to the prejudice of the son's wife.

Act. *Belshes.*Alt. *Scot.*Clerk, *Gibson.**Durie, p. 239.*

1628. December 16. L. GRANTON against L. COLLINGTON.

No 102.

L. of GRANTON being charged by his father-in-law, after his daughter's decease, spouse to Granton, to fulfil that part of the contract of marriage, whereby he was obliged to employ on land a sum of money, and to procure himself and his umquhile spouse infest in liferent, and the heirs gotten betwixt them in fee; the reason he suspended upon was, that his wife being dead, that part of the clause ceased, and for his own infestment, it being conceived in his own favours, he could not be compelled; and as to infesting of the heirs of that marriage, none could charge therefor but as heir to him, and none could be his heir, he living. This cause was not decided, but the LORDS inclined to judge that the suspender might be compelled to infest himself and his heirs of that marriage, as the contract bore, which being fulfilled once, such persons as might be heirs might claim the benefit of the infestment when the time fell, whereat they might seek the same by law, but the cause was not decided.

Memorandum. 1632. July 7. In a cause of the Bairns of umquhile Sir James Young, procreated of his second marriage, against the Eldest son of the second marriage; this same decision was observed, that the heirs of that marriage, as they were designed in the contract, were interpreted and sustained for bairns of that marriage, albeit they were not served heirs.

Act. *Aiton.*Alt. *Stuart.*Clerk, *Gibson.**Durie, p. 410.*