

1766. June 14.

JANET ANDERSON *against* ALEXANDER DONALDSON and Others.

No 99.

Provision to a daughter year and day after her marriage.

THOMAS ANDERSON, in his contract of marriage, became bound, in the event of there being *three* daughters, to pay them 30,000 merks, viz. "12,000 to the eldest, 10,000 to the second, and 8000 merks to the third."

These provisions were made payable within year and day after the marriages of the respective daughters; but there was no clause of annualrent.

Four daughters existed of the marriage, Janet the youngest, married Robert Nicol, 27th March 1725.

Elisabeth, the second daughter, obtained an adjudication of certain tenements belonging to the father, for her 10,000 merks, 19th January 1726.

Janet brought a process in 1727, against her father, and her three sisters, for a share of the 30,000 merks, and obtained decree in 1729, for 4500 merks as her portion; so as that 1500 merks should be taken from the shares of each of the elder sisters, who were decerned to make payment thereof to Janet, and her husband, for his interest. See the decision, *voce* IMPLIED WILL, No 5. p. 6590.

In a ranking and sale of the subjects in 1732, Geddes of Scotstown was preferred, *secundo loco*, on Elisabeth's adjudication to which he had right; but under the burden of the 1500 merks decerned to be paid to Janet.

Scotstown, having become purchaser at the sale, disposed the subjects to Alexander Donaldson and others.

After Robert Nicol's death, Janet his widow brought an action of mails and duties for payment of the 1500 merks.

The defender did not dispute the principle, that diligences, led by the person *in titulo* for the time, accresce to the true proprietor. But he maintained, that Janet had no right to the sum, which being payable year and day after her marriage, and not bearing annualrent, was moveable, and belonged to her husband, *jure mariti*.

Elisabeth's adjudication was led after the marriage. If, therefore, it accresced to the 1500 merks, the accretion took place in favour of the husband to whom the debt belonged, and could not operate *retro*, so as to make the debt heritable before the adjudication was led, and deprive the husband of his *jus quæsitum* in the sum.

Answered; Dies incertus habetur pro conditione. The provision was payable year and day after the pursuer's marriage; the pursuer might have died before that period; and, in that event, the 1500 merks would have remained with Elisabeth; but the adjudication was obtained within ten months of the pursuer's marriage. By that means, the whole 10,000 merks became heritable, so that the 1500 merks, eventually due to the pursuer, was heritable, not only before it was exigible by the pursuer, but before the *jus crediti* was vested in her person.

"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.