

1671. December 13. JACK against JACKS.

UMQUHILE Andrew Jack, in his son's contract of marriage, having disposed to him his lands, and obliged him to free the same of all debt, and having children of a second marriage, to whom he granted a bond for love and favour, anterior to the contract, whereupon the bairns have apprised the lands disposed by the contract; Christian Jack one of the marriage pursues reduction of these bonds and apprising, in consequence on two reasons; *imo*, That the bond was null, being subscribed by two notaries, but having only three witnesses, whereas the law requires four; *2do*, That the bond being for bairns' provisions, was revocable by the father at his pleasure, they being in his family, and was revoked by his son's contract of marriage, as was found in Glencorse's case, (see APPENDIX.) It was *answered*, That albeit *de jure* four witnesses be required to the subscription of notaries, yet three have been found sufficient, where the verity of the fact is adminiculated, as in the case of contracts of marriage whereupon marriage has followed, because such contracts are ordinary and presumed; and for the same reason bonds of provision to children, which are as ordinary, especially being of a second marriage, wherein there are obligations in favour of the bairns, and the same ground differences the case from Glencorse's; and the father could not justly by his son's contract of marriage recal children's provisions, which he was obliged to give. It was *answered*, That the bond bore for love and favour, without any relation to the contract. It was *replied*, That if the bonds exceeded not the contract, they behoved to be in implement thereof, though they bore not the same expressly.

THE LORDS inclined to sustain the bond, if it quadrate with the contract of marriage; but before answer, ordained the contract of marriage to be produced.

*Stair, v. 2. p. 22...*

\* \* \* Gosford reports this case :

IN a reduction of a bond granted by Andrew Jack for the sum of 5000 merks in favours of Claud and Grizzel Jacks, bairns of a second marriage, at the instance of Christian Jack and her tutor, as heir to John Jack, eldest son to the said Andrew, to whom, by contract of marriage, he had disposed his lands of Tannochside, and which were comprised upon the foresaid bond of 5000 merks, upon this reason, That the said bond was null, being subscribed only by two notaries and three witnesses; whereas the act of Parliament did require four witnesses; it was *answered* for the defenders, That the said bond being for implement of a contract of marriage, whereupon marriage followed, the want of one witness could not make the bond null, being so adminiculated, as had been found in many cases where infestments and sasines depending upon

No 103.  
A bond to children, in terms of their mother's contract, sustained, although virtually revoked in a posterior contract by the father, on his son's marriage.

No 103. contracts of marriage, were sustained, albeit otherwise they were and might be reduced.

THE LORDS did find, that if the sum of 5000 merks contained in the bond was in the obligation of the contract of marriage, that it could not be reduced upon that nullity; but if it did exceed the provision of the contract, it was null by the act of Parliament, and no better than other bonds so subscribed.

*Gosford, MS. No 422. p. 212.*

1672. June 20. GRAY of Haystoun *against* FORBES and LINDSAY.

No 104.

WILLIAM GRAY of Haystoun having granted bond to Lindsay, and the said Lindsay having assigned the same to his daughter, the said William Gray suspended upon a double-pounding, against the said assignee and a creditor who had arrested. It was *alleged* for the creditor, That the assignation was made by a father to a daughter, to defraud creditors. It was *answered*, That the father by contract of marriage was obliged, in case there should be no heirs male betwixt him and the assignee's mother, to pay to the heir or bairn female, at her age of 14 years, 4000 merks, and until then to entertain her; and that the assignee being the sole bairn of the marriage, her father had given the assignation foresaid for implement of the said obligation.

THE LORDS having considered, that the provision by the contract of marriage in favour of the daughters is only in case there should be no heirs male of the marriage, and that the father should have other heirs male of his body, so that the daughter should not succeed to the estate, and that both the father and mother are yet living, and of that age that it was not to be expected that the father would have other heirs male of his body by another marriage, and his daughter was his apparent heir whatsoever; therefore they found, that the case of the provisions in favours of the heirs female did not exist, and preferred the creditor.

For Lindsay, *Lockhart and Bannerman.* For Forbes, *Bernie, &c.* Clerk, *Gibson.*

*Dirleton, No 169. p. 68.*

\* \* Stair's report of this case (Bannerman against Creditors of Seton and Gray) is No 18. p. 4889. *voce* FRAUD.

1683. February.

BONAR *against* ARNOT.

No 105.

Where one was bound by contract of

A MAN obliged in his contract of marriage to provide the fee of 2000 merks to the heirs of the marriage, which failing, to his own next heirs, having, by a