

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