

S E C T. VI.

Obligation to grant a provision by advice of friends.—Obligation granted in implement of an unlawful promise.

No 32. 1717. July 9. GORDONS *against* GORDON.

AN heir having obliged himself to provide the younger children by the advice of five friends therein named, in what he should be able, upon their arrival at perfect age; when the term was come, three of the friends, by a writing under their hand, modified the sums to be paid, but without calling the heir, or meeting together, their subscriptions having been obtained separately; and as to the other two, the one was dead and the other refused to subscribe.—THE LORDS found that the friends could not legally determine, without calling the heir, and without being met together.—See APPENDIX.

Fol. Dic. v. 2. p. 17.

No 33. 1718. February 8. POLLOCK *against* CAMPBELL of Calder.

IN a son's contract of marriage, the father having become bound to provide his estate to his son and the heirs male of the marriage 'free of all charge and burden,' and having reserved no power to provide younger children, he, at the same time, privately elicited from his son a promise to grant him a faculty of burdening the estate with a certain sum to his younger children, which promise the son having fulfilled after the marriage, by granting a bond upon the narrative of the promise, and that the contract of marriage had been entered into by the father, in compliance with the bride's friends, that there might be no stop to the marriage; the LORDS reduced the bond, at the instance of the heir male of the marriage, as being granted in consequence of an unlawful promise *contra fidem tabularum nuptialium*; for though of itself it be a lawful and reasonable deed for a man to provide his brothers and sisters, and the bond must have stood had it been granted *ex proprio motu*, yet where a man grants an obligation conceiving himself bound where he is not, or led by a scruple of conscience to fulfil a promise which ought not to have been exacted of him in these circumstances, and which the law reprobates, such obligation cannot be effectual.—See APPENDIX.

Fol. Dic. v. 2. p. 18.

See IMPLIED OBLIGATION.

See APPENDIX.