No 113. be implement directly in the terms of the contract; but a disposition in favour of the heir-expectant of the marriage, is not implement of the contract, seeing it is not in favour of the heir of the marriage, but of one who never was heir; and were this doctrine to hold, it would open a door to evacuate obligations in contracts of marriage, however strictly conceived; the father would have no more ado, but the moment his son was born, to settle the fee upon him, with a power to alter, and naming such substitutes as he had amind, excluding possibly the whole other heirs of the marriage; as he had a thousand chances to one, that the infant shall not survive him, he has all these chances for him, to disappoint the obligations he came under in his marriage-contract. To the *second*, a provision to heirs whatsomever, points out the pursuer just as directly as it had been to the eldest son to be procreated, and the heirs of his body; and the granter ought to have no power to prefer the heir-male to the heir-female in this case, more than he has to prefer the second son, when the provision is to heirs-male of the marriage. THE LORDS found, That the contract of marriage was sufficiently implemented, by the father disponing his lands to his eldest son, and his heirs-male, &c. and therefore preferred the heir-male to the pursuer, heir whatsomever of the marriage. See APPENDIX.

Fol. Dic. v. 2. *p.* 288.

1738. *July* 25. NISBET *against* NISBET.

No 114.

WHERE a man was bound, by his contract of marriage, to secure a sum to the heir of the marriage, it was found, that he might substitute whom he would to the heir of the marriage, and the descendants of his body, because he may do rational as well as onerous deeds.

Fol. Dic. v. 4. *p.* 190. *Kilkerran*, (PROVISION TO HEIRS AND CHILDREN.) *No* 2. *p.* 455.

1739. *December* 14. PRINGLE *against* PRINGLE.

No 115.

PRINGLE of Symington being bound, by his marriage-contract, to provide 12,000 merks to the children of the marriage, disponed to his eldest son his land estate, who being pursued by a sister to account for the executry funds, *pleaded*, That the 12,000 merks, being a moveable debt, which affected the executry, the share thereof, to which he was entitled by the marriage-contract, exceeded the sum pursued for, which was, therefore, excluded by compensation. THE LORDS were of opinion, that where a man who, by his contract of marriage, is bound to provide to a certain extent, leaves his estate, heritable or moveable, to descend in the legal channel, it is implement to the children succeeding, as

heirs or executors, of their part of the provision; and that the disposition here was the same as a succession; and they found in this case, that the defender's share of the 12,000 merks was satisfied and extinguished by the disposition to the land estate.—But this judgment was reversed on appeal. No 115.

Fol. Dic. v. 4. *p.* 190. *Kilkerran.*

*** This case is No 123. p. 11449. *voce* PRESUMPTION.

1747. *January* 23. KER *against* KERS.

No 116.
Whether a person, bound by his contract of marriage to settle his estate upon the heir of the marriage, can lay him under prohibitory and irritant clauses?

THE question has often occurred, How far one having, in his contract of marriage, become bound to settle his estate upon the heir of the marriage, can implement that obligation, by a deed in form of a tailzie, containing prohibitory and irritant clauses? But the abstract question has never yet been determined; as in all the cases wherein that question has occurred, there have been irrational clauses in the deed, upon which the Lords have reduced, never chusing to determine general and abstract points without necessity; and if there be but one irrational clause in a tailzie, it is sufficient to void the whole, as *non constat* that the granter would have made the tailzie, if such clause had not been in it. Accordingly, in the case of the tailzie of Bachilton, the Lords, in respect of certain irrational clauses therein contained, reduced it, at the instance of the heir of the marriage.

The like was done in the present case, where Ker of Abbotrule, who had become bound in his contract of marriage to settle his estate, which was about 6000 merks a-year, upon the heir-male of the marriage, had executed a tailzie thereof in favour of William Ker, his eldest son and heir-male of the marriage; wherein, besides other unreasonable clauses, he laid him under a strict prohibition, under an irritancy, to grant a jointure to his wife, exceeding L. 20 yearly, or provisions to his children, exceeding two years rent; of which the said William Ker having pursued reduction against his own children, and other substitutes, the LORDS "Found, that the tailzie contained clauses irrational, contrary to the marriage-contract; and reduced," &c.

Fol. Dic. v. 4. *p.* 190. *Kilkerran,* (PROVISION TO HEIRS AND CHILDREN.) *No* 7. *p.* 459.

*** D. Falconer reports this case:

KER of Abbotrule, in his contract of marriage, became bound to settle his estate, said to be about 6000 merks Scots yearly, upon himself and the heirs-male of the marriage, and afterwards he executed a tailzie, in favour of William Ker, his eldest son, and his heirs-male, reserving his own liferent, and a