

heirs or executots, 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.

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

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?

No 116.

power to sell, gift, and dispoſe, the eſtate, and to contract debts, providing that his ſon ſhould be bound to pay all his debts, and proviſions granted, or to be granted, to his younger children, particularly a bond of 60,000 merks Scots, granted to two daughters of his ſecond marriage, and all proviſions he ſhould grant to his preſent, or any future wife, particularly an annuity of 1200 merks, and the liferent of the houſe, gardens, and incloſures, ſaid to be worth 000 merks, prohibiting the heirs of tailzie to contract debt, or alienate, and laying him under the burden of redeeming adjudications led on the tailzier's debts and children's proviſions, two years before expiration of the legal, prohibiting him to grant a jointure exceeding L. 20 Sterling to his preſent wife, nor proviſions to his younger children, exceeding two years free rent of the eſtate, obliging him to poſſeſs the eſtate by that, and no other title; with power to ſell as much as would answer the burdens laid thereon by the tailzier, at 20 years purchase.

William Ker raiſed a reduction of this tailzie, in which he was oppoſed by his own children, the heirs ſubſtitutes.

Deciſions cited for the purſuer, 17th February 1727, Gentles againſt Mitchell, and two caſes relating to the eſtates of Bachilton and Achlyne.—See APPENDIX.—See No 112. p. 12984.

THE LORDS found, that the tailzie under reduction did contain proviſions and clauses irrational and inſiſtent with, and contrary to the faith of the marriage-contract, and reduced the ſaid tailzie.

Reporter, *Arniston.* Act. R. *Craigie.* Alt. J. *Graham.* Clerk, *Forbes.*  
D. *Falconer*, v. 1. No 159. p. 205.

No 119.

1750. February 22. SMITH and Others against HENDERSON.

A TENANT being obliged, by his contract of marriage, to lay out 3700 merks on land, and to take the rights to himſelf and wife in liferent, and children of the marriage in fee; the LORDS found he was not obliged to ruin himſelf by implementing this obligation, which could not be done without ſelling the ſtocking of his farm.

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

\* \* This caſe is No 17. p. 6563. voce IMPLIED OBLIGATION.

No 118.

1751. July 17. JAMES STRANG against MATTHEW STRANG.

A tailzie, containing unreaſonable conditions, in

JAMES STRANG, portioner of Meikle Earnock, being bound by his contract of marriage to provide his ſaid lands, and all others he ſhould acquire, to the heirs