

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

and bairns of the marriage, tailzied the same to his heirs-male, with other substitutions.

James Strang, the tailzier's eldest surviving son, insisted in a reduction of the tailzie, as in defraud of the obligation in the contract of marriage, and highly irrational, in as far as his father became bound to give his estate to heirs whatsoever, and had only given it to him and his heirs-male; and had, by substitution, preferred his own daughter to the daughter of his son; he had prohibited the heirs to contract debt; and had not allowed them to provide wife or children; and obliged them to use the name of Strang, and design themselves portioners of Meikle Earnock; and yet he had not prohibited them to sell the estate: An heir is laid under an irritancy if he shall marry a woman by whom he has had a natural child; which is no irritancy upon an heiress: This estate extends only to L. 537 Scots yearly, burdened with L. 8000 of debt.

Answered; That the estate was provided to the heirs and bairns of the marriage, which was to be understood equally amongst them; so that the eldest son having got the whole by the tailzie, could not quarrel it: A father obliged to give his estate to his eldest son, is not disabled from giving it him under a tailzie; nor is the proprietor of a small estate disabled from tailzieing it, more than if it were a large one; where there was so much debt, it was reasonable to prohibit from contracting more; and, at the same time, to allow the heir to sell in case of necessity.

Replied; A provision of a land estate, to the heirs and bairns of a marriage, gives the right to the heir.

THE LORDS sustained the reasons of reduction.

Act. R. *Craigie & Boswell.*

Alt. *Millar.*

Clerk, *Pringle.*

Fol. Dic. v. 4. p. 189. D. Falconer, v. 2. No 224. p. 269.

1751. July 25.

Sir JOHN DOUGLAS *against* DOUGLAS.

SIR WILLIAM DOUGLAS of Kelhead being obliged, by his contract of marriage, to secure his estate in favour of himself, and the heirs-male to be procreated thereof; which failing, the heirs-male to be procreated of any other subsequent marriage; which failing, the eldest heir-female of that marriage, without division; which failing, the eldest heir-female of any subsequent marriage, without division; which failing, his heirs and assignees whatsoever; disposed the same, by an entail, to himself in liferent, and to John Douglas, his eldest son, and the heirs-male of his body, in fee; which failing, with other substitutions, and under conditions, as after-mentioned.

Sir John Douglas, the institute, raised a reduction of this tailzie, as in defraud of the obligation in his father's contract of marriage, whereby he was bound to

No 118.

defraud of the tailzier's contract of marriage, reduced,

No 119.

Found in conformity with the above.