No 52.

place uncertain, whether the granter might not intend that the settlement should be effectual, even upon the supposition of a posthumous child. He must have known his wife's pregnancy, as in fact she was delivered no later than five weeks after his death. He had an opportunity to make an alteration; and since he did not alter, it has a strong appearance that he did not intend to alter. 2*do*, It is not likely, at any rate, that he intended an alteration in the case which happened of the child's living but a few months; for, in that case, the child was not in any degree hurt by the settlement. 3*tio*, Supposing an intention to alter in that case, yet this supposed intention could not have the effect to void the settlement *ipso jure*. It could only have the effect to privilege the child in equity, to bring a reduction of the settlement; and as this was never attempted, the settlement must stand good. See January 7. 1762, Jervey *contra* Watts, *voce* Legitim.

Fol. Dic. v. 3. *p.* 301. *Sel. Dec. No* 167. *p.* 228.

*** See Oliphant, 19th June 1793, *voce* Implied Will.

SECT. X.

Intention presumed contrary to words.

1752. *July* 10. Lady Mary Drummond *against* The King.

No 53.

By a clause in a marriage contract, a provision is stipulated to a daughter, in the event of no male issue of the marriage. The estate was forfeited in the person of the second, and only surviving son. The provision was found not to take effect.

In the contract of marriage betwixt James Lord Drummond and Lady Jean Gordon, *anno* 1706, the estate of Perth is provided to the heirs-male of the said marriage; whom failing, to Lord Drummond's heirs-male of any other marriage; whom failing, to the heirs-male and of tailzie contained in the infeftments of the estate. And the contract contains the following clause in favour of daughters: 'And seeing the Earldom of Perth is tailzied to heirs-male, so 'that if there be daughters of the said marriage they will be secluded from the 'succession; therefore the said James Lord Drummond binds and obliges him 'and his heirs to pay to the said daughter or daughters the sums of money following, viz. if there be but one daughter, the sum of 40,000 merks; if two, '&c. to be divided amongst them as their father shall think fit; obliging him 'to pay the said respective sums to the daughters at their ages of 18 years 'complete, or marriage, which of them shall first happen after the dissolution

No 53.

'of the present marriage, with annualrent; and, in the mean time, to educate 'and entertain the said daughters.' It is declared 'that these provisions shall 'be in satisfaction of portion natural, bairns part of gear, and other benefit 'whatever which the daughters as heirs of line, or any other manner of way, 'may claim through the decease of their father and mother, or as heirs of line 'to any of their predecessors.'

There being two sons and one daughter of this marriage, the estate was forfeited to the Crown by the attainder of the youngest, to whom the succession 'opened by the death of his elder brother. Lady Mary the daughter put in her claim for the 40,000 merks provided to her by the said contract of marriage. The answer was, that it is extremely unusual to provide daughters in a contract of marriage, unless where, by the defect of the male issue, the estate goes to a collateral heir-male: That in all cases where a provision is intended for the younger children of a marriage to take place in all events, no distinction is made between males and females; nor is there any reason for making a distinction: That, in the present case, the inductive cause of the provision being, that the estate was tailzied to heirs-male, and the provision itself being to females, make it evident that the provision was only intended to take place failing issue male of the marriage; and therefore, that this must be understood a conditional provision, which is not purified by the existence of the condition.

It was *replied* for the claimant; That the provision being clear, and conceived in absolute terms, is the best evidence, or rather the only legal evidence, of the intention of the granter; and whatever may be one's private conviction, judges cannot take upon them to give another sense to words than they naturally bear; especially when the natural import makes a rational and consistent deed, though a little out of the ordinary channel. For if judges were to give themselves such a latitude, they might come at last to make every man's testament for him, in place of interpreting it.

It carried by a narrow plurality to sustain the claim.

Reversed in the House of Peers.

In this case, it was certainly not the intention of the contractors to provide any sum to daughters, if the estate should be inherited by a son of the marriage. And words beyond intention are not binding in law.

Fol. Dic. v. 3. *p.* 301. *Sel. Dec. No* 16. *p.* 18.

1794. *February* 14.

WILLIAM and PETER ROUGHEADS *against* MARION RANNIE, and Others.

No 54.
A father having granted a provision to his son, and

WILLIAM CRAIG, by a holograph settlement, containing several ambiguous and contradictory clauses, and proceeding upon the narrative of love and affection to his wife and children, conveyed to them *nominatim*, and in the