

1663. July 3.

GORDON *against* FRASER.

No 41.

ONE, in his contract of marriage, having become bound to infest his wife in five chalders of victual for the aliment of his younger children, till their age of fourteen, and having, in implement of this obligation, disposed certain moveables to his wife; in a competition betwixt her, in behalf of the children, and the executors-creditors of the husband, whose debts were contracted after the said dispositon, the LORDS preferred the creditors, unless the defunct were *solvendo* at the time of his decease.

Fol. Dic. v. 2. p. 280. Stair.

* * * This case is No 42. p. 2800. *voce* COMPETITION.

1677. January 24. RONALD GRAHAME *against* SARAH ROME.

No 42.

JOHN ROME being obliged by his contract of marriage with his second wife to provide 10,000 merks in favours of himself, and his spouse in conjunct-fee, and the heirs of the marriage; whom failing, to his own heirs and assignees; and to provide also 5000 merks in favours of the remanent bairns of the said marriage;

THE LORDS found, That the father was fiar of the said sums, and that the heir of the marriage and remanent bairns had an interest only to succeed to him as heirs of provision in the same; and that the creditors might affect the said sums, and would be preferable to the bairns, notwithstanding their debts were contracted after the said contract of marriage, and inhibition thereupon, seeing the inhibition could not take away his fee: And the import and effect both of the said obligements and inhibition, is only that the father should do no fraudulent deed, without an onerous cause, in prejudice of the same.

Reporter, Gosford.

Fol. Dic. v. 2. p. 280. Dirleton, No 437. p. 214.

* * * Stair reports this case:

JOHN ROME, by his contract of marriage with his second wife, is obliged to provide himself and his wife by security in 10,000 merks, and to the eldest son of the marriage, and 5000 merks to the remanent bairns. Upon which contract inhibition was used against the father by the wife's brother. Thereafter he borrows a sum of money from Ronald Grahame, and the bairns of this marriage, beside the heir, obtained decret against the heir of line, and thereupon apprise. Ronald Grahame doth also apprise; and both are within year