

1728. December 7. CRAIK *against* CRAIK.

No III.

WILLIAM CRAIK, in his marriage-contract, became bound to provide and secure himself, and the heirs-male to be procreated of the marriage, certain lands therein named, and further, that he should not alter the foresaid provision and destination of succession, conceived in favour of the heirs-male of the marriage. After the dissolution of the marriage, by the death of the wife, William Craik having but one son of the marriage, Adam, and one daughter, Jane, made a settlement of his estate in favour of his only son, and the heirs-male of his body, (in terms of the foresaid contract of marriage,) whom failing, to the heirs-male of his own body; whom failing, to his daughter and the heirs-male of her body; whom failing, to the heirs-female of his son's body; and whom failing, to his own heirs and assignees whatsoever; and the settlement contains the following provisions; "That it should not be understood to debar any of the heirs of tailzie from granting reasonable provisions to wives and children, or to contract debts for just and onerous causes, but that they should have nowise liberty to disappoint the course of succession, by contracting debts unnecessarily, or making deeds or conveyances in prejudice thereof." Adam having raised a reduction of his father's settlement, upon this ground, that by the contract of marriage the father was bound to settle the succession of the estate upon him, the heir-male of the marriage, and, consequently, upon his heirs whatsoever; and therefore was debarred from preferring his own daughter, to his son, the pursuer's daughter; the LORDS found, that the provision in the contract of marriage, being only to the heirs-male of the marriage, the father was at liberty to make such substitutions as he thought reasonable. See APPENDIX.

*Fol. Dic. v. 2. p. 287.*

1731. December 11.

GORDON of Auchline *against* CHRISTIAN and BARBARA GORDONS.

No 112.

A person who had settled his estate on the heirs of a marriage by contract, found not entitled to make a tailzie of the estate consistent with the contract.

GORDON of Auchline, who stood bound in his contract of marriage to resign his estate in favour of himself, and the issue of the marriage, did, thereafter, execute a tailzie with clauses prohibitive and irritant to himself in liferent, and, after his decease, to Alexander Gordon, his eldest son, heir of the marriage, also in liferent, and to the heirs-male lawfully to be procreated of his body; whom failing, to James Gordon, his second son, and the heirs-male of his body; whom failing, to the heirs-male of the tailzier's body of any other marriage, whom failing, to the heirs-female of his body, &c. James Gordon, now of Auchline, in the right of the heir of the marriage, raised a reduction of this tailzie, insisting, that no father, who stands bound, by contract of marriage, to resign his estate in favour of himself and the issue of the marriage, can tailzie that estate, with clauses prohibitive and irritant, in regard he is under obligations to make the