

*Replied* for the present Grangehill, That the clause in the bond was clear, secluding assignees in general, and therefore there was no ground for the above distinction.

No 7.

*Duplied* for Glenkindy, That the above interpretation was sufficiently cleared by the terms of payment in the bond, viz. the one half at the term of Whitsunday, after expiration of year and day of the marriage, and the other half at the next Whitsunday thereafter; so that the very payment to the wife made it belong to the husband *jure mariti*; and there being no clause obliging the husband to re-employ (which the father would have done if he had designed the fee of the money to have for ever continued with her heirs), he justly claims the yearly annualrents even after the marriage, with as good ground as the principal sums, both being provided and payable in the same manner.

THE LORDS found, that though the bond of provision to the daughter secludes assignees, yet that did not hinder her to assign the same to her husband, by contract of marriage; and therefore found the defender liable, and repelled the defences.

Act, Horn.

Alt. Se.

Clerk, Robertson.

Fol. Dic. v. I. p. 305. Bruce, v. I. No 22. p. 30.

1735. January 29.

CRAIK against CRAIK.

No 8.

WILLIAM CRAIK having one son, Adam, and one daughter, Jean, made a settlement of his estate in favour of Adam, and the heirs male of his body, &c. which failing, to his daughter Jean, &c. which failing, to the heirs female of his son's body, &c. with this provision, that none of the heirs of entail should have liberty to disappoint the course of succession by contracting debts unnecessarily, or by making deeds or conveyances in prejudice thereof. After the father's death, Adam, the son, in his marriage contract, made a new settlement of the estate, wherein he preferred the heirs female of the marriage to his sister Jean, and her heirs; and he also dying without issue male; in a competition betwixt his eldest daughter, Mary, who claimed the estate upon this settlement, and her aunt Jean, who claimed it upon the former, the LORDS found, that Adam Craik could not, in his contract of marriage, settle the succession in favour of his own daughters, preferably to his sister. Mary here *urged* the onerosity of the contract of marriage, the obvious answer to which was, that however onerous with regard to the husband and wife, it is merely gratuitous with regard to the heirs of the marriage, especially with regard to remote substitutes, such as Mary, who is postponed not only to the heirs male of the marriage, but to the heirs male of any other marriage.—See APPENDIX.

Fol. Dic. v. I. p. 304.