

equally as if they were not provided to the heirs of the marriage; or being provided to the heirs of the marriage, as if the legacy had been granted in *liege poustie*, by way of disposition *inter vivos*. And thus it was determined, Mitchell *contra* Children of Littlejohn, 16th June 1676. No II. p. 3190.

No 13.

*Repleit* for Barncailly, heir of the marriage, That the law of death-bed takes place against every deed done upon death-bed, to the prejudice of the heir; and that indifferently, whoever be the heir, whether of line, tailzie, or provision; and whatever be the deed, whether an alienation of subjects in themselves heritable or moveable.

'THE LORDS found, That the clause of conquest in the contract of marriage, did hinder the father to dispose on his moveable estate upon death-bed.'

*Fol. Dic. v. I. p. 212. Rem. Dec. v. I. No 32. p. 64.*

1738. December 16.

CAMPBELLS *against* CAMPBELLS.

No 14.

ONE having become bound in his contract of marriage to provide a certain sum, and also the conquest during the marriage, to himself and spouse in conjunct-fee, and to the children to be procreate of the marriage in fee, did purchase an estate during the marriage, taking the rights thereof to himself, his heirs and assignees, and upon death-bed did execute a deed, settling both heritable and moveable estate upon his eldest son, with the burden of certain provisions, in favour of the younger children; in a reduction of this settlement, at the instance of the younger children, upon the head of death-bed, the LORDS were unanimous, that seeing there was no actual settlement of the conquest in terms of this obligation, to constitute the children heirs of provision, they had not the privilege of death-bed; that they were constituted creditors by this obligation, and in whatever way a service in general as heir of provision or conquest may have crept into our practice, it is, strictly speaking, inept; such a thing, while the father is alive, cannot be, and if he died without implementing, the obligation is purified in favour of the children, and they have a direct action against their father's representatives to make over the conquest in their favour. See APPENDIX.

*Fol. Dic. v. I. p. 211.*