

No 113. be implement directly in the terms of the contract; but a disposition in favour of the heir-expectant of the marriage, is not implement of the contract, seeing it is not in favour of the heir of the marriage, but of one who never was heir; and were this doctrine to hold, it would open a door to evacuate obligations in contracts of marriage, however strictly conceived; the father would have no more ado, but the moment his son was born, to settle the fee upon him, with a power to alter, and naming such substitutes as he had amind, excluding possibly the whole other heirs of the marriage; as he had a thousand chances to one, that the infant shall not survive him, he has all these chances for him, to disappoint the obligations he came under in his marriage-contract. To the *second*, a provision to heirs whatsoever, points out the pursuer just as directly as it had been to the eldest son to be procreated, and the heirs of his body; and the granter ought to have no power to prefer the heir-male to the heir-female in this case, more than he has to prefer the second son, when the provision is to heirs-male of the marriage. THE LORDS found, That the contract of marriage was sufficiently implemented, by the father disposing his lands to his eldest son, and his heirs-male, &c. and therefore preferred the heir-male to the pursuer, heir whatsoever of the marriage. See APPENDIX.

*Fol. Dic. v. 2. p. 288.*

1738. July 25.

NISBET *against* NISBET.

No 114.

WHERE a man was bound, by his contract of marriage, to secure a sum to the heir of the marriage, it was found, that he might substitute whom he would to the heir of the marriage, and the descendants of his body, because he may do rational as well as onerous deeds.

*Fol. Dic. v. 4. p. 190. Kilkerran, (PROVISION TO HEIRS AND CHILDREN.)*

*No 2. p. 455.*

1739. December 14.

PRINGLE *against* PRINGLE.

No 115.

PRINGLE of Symington being bound, by his marriage-contract, to provide 12,000 merks to the children of the marriage, disposed to his eldest son his land estate, who being pursued by a sister to account for the executry funds, *pleaded*, That the 12,000 merks, being a moveable debt, which affected the executry, the share thereof, to which he was entitled by the marriage-contract, exceeded the sum pursued for, which was, therefore, excluded by compensation. THE LORDS were of opinion, that where a man who, by his contract of marriage, is bound to provide to a certain extent, leaves his estate, heritable or moveable, to descend in the legal channel, it is implement to the children succeeding, as