

culty is, that it is averred that the suspender has absconded from Jamaica. But then this averment is not offered to be proved, and the intelligence from Jamaica does not imply that such is the case.

On the 22d December 1770, "the Lords ordained the suspender to be set at liberty."

*For M^cKay, A. Lockhart. Alt. H. Dundas.
Reporter, Kaimes.*

1771. *January 23.* JAMES CHALMER *against* ROBERT HAMILTON.

PROVISION TO HEIRS AND CHILDREN—FACULTY.

Provisions to children executed in consequence of a reserved faculty, and inserted as a burden on an heritable bond granted by the father to one of his Creditors, whether effectual against personal creditors?

[*Faculty Collection, V. p. 194; Dictionary, 13,054.*]

AUCHINLECK. The £5000 bond granted to Mr Hamilton was in effect for £5000, minus 6000 merks; for to that extent there was a power of charging reserved. This reserved power was an estate in the father, and therefore is affectable by his creditors. To this, neither Mr Hamilton, nor the daughters of Hugh Montgomery could object. If the daughters got their provisions antecedent to the contracting of the debt in Chalmer's person, such provisions cannot now be challenged.

COALSTON. This bond is of a very singular form. I do not remember ever to have seen one of the kind. There is a reservation of liferent, and of a faculty to burden to the extent of 6000 merks, for provision to the children. The first was certainly affectable by creditors, though intended for Montgomery's own aliment: the second is a power to burden for a special purpose. Should be sorry if such reservation was not affectable by creditors, for it would be the source of much fraud. This question was never specifically determined. Bonds of provisions must be proved delivered. *Here* no proof of delivery.

PRESIDENT. It does not appear that Montgomery ever exercised his powers as to *Jean*, one of his daughters, nor that he was under any obligation whatever to settle any part of the 6000 merks on the daughters of his daughter Mary; which, however, he did.

On the 23d January 1771, the Lords "remitted to the Ordinary to find that the share of *Jean*, not provided by Hugh Montgomery, must go to his creditors;" altering Lord Kennet's interlocutor.

Act. R. Blair. Alt. H. Campbell.

N.B. In the report of this case in the Faculty Collection, it is said that the Lords refused the petition, and remitted *simpliciter* to the Ordinary.