

'THE LORDS repelled the objections to the bond, and found the younger children entitled to be ranked on their interest produced in their due course, conform to the date of their infestment.'

No 100.

For the Creditors, *Lockhart.* Alt. *Ferguson.* Clerk, *Kilpatrick.*

Fol. Dic. v. 3. p. 49. Fac. Col. No 220. p. 404.

D. Rae.

1785. February 8. JANET DUNCAN against JOHN SLOSS.

By an antenuptial contract of marriage, John Sloss settled a large jointure on Janet Duncan his second wife; for payment of which, after his death, she sued his heir, a child of the first marriage, on whose provisions it encroached.

No 101.

A provision to a wife, by antenuptial contract, ineffectual so far as exorbitant.

Pleaded for the defender: The jointure in question is exorbitant, being greatly disproportionate to the means of the granter; and therefore, *quod* the excess beyond its rational or just amount, it is to be postponed to the claims, as well of his children by the prior marriage, as of his other creditors; Gosford; Stair; 19th January 1676, Stansfield *contra* Brown, No 73. p. 954.; Kilkerran, *voce* BANKRUPT, 26th July 1744, Creditors of Sir James Campbell, No 103. p. 988. *Fac. Col.* p. 225. 12th July 1758, Noble *contra* Dewar, *voce* TAILZIE; Erskine, p. 564. Fountainhall, 23d March 1683, Gartshore *contra* Brand, No 102. *infra.*

Answered: The authorities quoted relate to postnuptial contracts alone; for it has not yet been found, that provisions to wives, contracted for by antenuptial deeds, are not onerous debts in the fullest sense.

The cause was reported by the Lord Ordinary; when

The Court restricted the jointure in question to a rational extent, in the same manner as if it had been granted in a postnuptial contract.

Lord Reporter, *Gardenton.* Adv. *W. Craig.* Alt. *M. Ross.* Clerk, *Horne.*

Fol. Dic. v. 3. p. 50. Fac. Col. No 197. p. 310.

Stewart.

S E C T. XIII

The Onerosity of Provisions made in Postnuptial Contracts.

1683. March 23. GARTASHORE against BRAND.

ALEXANDER GARTASHORE, late bailie in Edinburgh, and Elizabeth Brand, relict of Gavin Weir, competing:—THE LORDS, on Castlehill and Pitmedden's report,

No 102.

A provision to a wife, whether by