

transmit to heirs; and, for the reasons already suggested, there was no room for the implied exercise by the simple contraction of debt.

No 161.

The last argument by which the right of challenge upon the act 1621 was abandoned, and the proposition maintained, that the children had but a *spes successionis* to their father, and must be postponed to his onerous debts, had no legal foundation. By these bonds of provision, the children were creditors not only *ex figura verborum*, but in substance and effect. The term of payment being suspended did not hinder them from being creditors; they had no occasion to make up any title by service or otherwise, in order to draw their provisions; so that the circumstance upon which the petitioner's proposition was assumed, did not exist.

THE LORDS refused the petition, and remitted *simpliciter* to the Ordinary.

Lord Ordinary, *Kennet*.

For Hamilton, *Ilay Campbell*.

For Chalmers, *Blair*.

Clerk, *Tait*.

R. H.

Fac. Col. No 65. p. 193.

1794. November 26. CANNAN *against* GREIG.

No 162.

A WIFE having, in a postnuptial contract of marriage, disposed lands to her husband in liferent, and to the heirs of the marriage in fee, a clause was subjoined, granting power to the husband, 'if he shall see cause, to sell the lands, or burden them with debt at his pleasure, in every respect as if he had been unlimited fiar, on condition that he granted security to provide the heir in L. 2000, payable at his death.' The disponee contracted debts beyond the value of the estate, and died without granting bond or security for the L. 2000 to his heir. THE LORDS found the heir preferable for that sum to all the onerous creditors of the disponee.

Fol. Dic. v. 4. p. 188. Fac. Col.

* * * This case is No 60. p. 12005. *voce* PROCESS.

See Cunningham against Cunningham, No 139. p. 13024.

Provisions to children, how far safe against a reduction upon act 1621. See BANKRUPT.

Bond of provision not effectual until delivery or death. See DELIVERY.

Not presumed delivered of the date. See PRESUMPTION.

When understood delivered. See PRESUMPTION.

Rights taken by parents in name of children, when revocable? See PRESUMPTION.

Posterior provisions, when understood in satisfaction of prior. See PRESUMPTION.

Doubtful clauses in deeds of provision, how interpreted. See CLAUSE, and IMPLIED CONDITION.

Provisions in a contract of marriage, or otherwise, how far they imply limitations upon the receiver. See FIAR, ABSOLUTE, LIMITED.

See CONDITION.

See JUS QUÆSITUM TERTIO.

See APPENDIX.