

No 97.

marriage her preference, *Replied*, That notwithstanding of provisions in favours of the children by the first contract, the father may (as was owned by the other side) do rational deeds, even in prejudice of the children's provisions by that first contract. Now, there could not be a more rational, nay onerous deed, than when he got 15,000 merks of portion with a Lady, to provide 5000 of his own to be added thereto for a provision to the children of the marriage. And this was rational even as to the children of the first marriage, who had a fair hazard to succeed to the whole 15,000 merks, the sum being provided to his heirs whatsoever, failing heirs of the marriage.

THE LORDS preferred the Lady for her liferent, and found the daughters came in *pari passu* proportionally, effecting to their respective sums.

For the Lady, *Boswell*.

Alt. *Sir John Ferguson*.

Clerk, *Gibson*.

*Fol. Dic. v. 1. p. 73. Bruce, No 114, p. 141.*

1729. *November 18.*

CREDITORS of SIR DAVID THOIRS *against* LADY MIDDLETON.

No 98.  
A provision by a person insolvent, to his nephew's wife in her contract of marriage, held to be onerous and not reducible.

A PERSON insolvent became bound in his nephew's contract of marriage, among other provisions, to pay the wife an yearly annuity of 2000 merks, to commence after the husband's decease, in security of which he infeft her in certain lands. The granter's creditors raised a reduction of this alienation, upon the act 1621, alleging it to be *ultra vires* for the granter, to make voluntary alienations of his effects, in prejudice of his prior lawful creditors.—THE LORDS refused to sustain the reduction, the said liferent provision being onerous as to the wife, in so far as upon the faith thereof, she had entered into the marriage contract.

*Fol. Dic. v. 1. p. 72.*

No 99.

1730. *June 12.*

COCK *against* COCK.

A MAN, who in a second contract had provided the children of the marriage to the fee of L. 6000, thereafter disposed to his eldest son, by his first wife, in that son's contract of marriage, two tenements, valued at about 3000 merks, which proved to be most of his substance, burdening the same with L. 1000 Scots to the children of the second marriage.—THE LORDS found the deed gratuitous, *quoad* the eldest son and his children, and reducible *in toto* upon the act 1621.

*Fol. Dic. v. 1. p. 73.*