

No 17.

*** Kilkerran reports the same case :

DAVID HENDERSON, tenant in Buitlandhill, in his contract of marriage with Katharine Smith, daughter of Thomas Smith, tenant in Foord, became bound to provide, and have in readiness, of his own proper means, at the term of Martinmas after the marriage, the sum of 2000 merks, which, with 1700 merks of tocher, he became bound to lay out on land, or other security, and to take the rights thereof to himself and spouse, the longest liver, in conjunct fee and liferent, and to the children to be procreated of the marriage; which failing, to himself and his heirs whatsoever, in fee; and execution was provided to pass at the instance of James Smith and John Gray, two neighbouring tenants.

This marriage dissolved by the death of the wife, leaving three children, now living in family with their father; and the said Smith and Gray registered the contract, and thereon raised horning and arrestment, and charged him to lay out and employ the sum, in terms of the contract.

Of this, he having complained by bill of suspension, the LORDS were all so much of opinion, that this charge was not to be allowed to proceed, as what must ruin him, if he should be obliged to convert the stocking on his farm, which was his estate, into money; that, upon report, the bill was passed, without caution or consignation; notwithstanding the reason assigned by the chargers for this diligence, that the suspender, in an advanced age, had married his servant maid, which foreboded no good disposition towards his children; and the suspension was accordingly expedite upon the 23d of November last.

Notwithstanding this, Smith and Gray proceeded to put the arrestments, contained in the letters of horning, in execution; whereof he having complained, as oppressive, and therewith presented a bill for loosing the arrestments, the LORDS 'allowed the bill, for loosing the arrestments, to pass in like manner, without caution or consignation; but found no contempt of authority;' in respect it is lawful to arrest, notwithstanding an expedite suspension.—See PROVISION TO HEIRS AND CHILDREN.—SUSPENSION.

Kilkerran, (PROVISION TO HEIRS AND CHILDREN) No. 14. p. 466..

No 18.

On the same paper a person granted two bonds, for different sums,

1750. November 16.

STEWART against SIR PATRICK MURRAY.

ANTHONY MURRAY, merchant in Edinburgh, granted bond to the children of James Stewart, Attorney in the Exchequer, for 36,000 merks Scots, payable the first term after his death; providing the sons had attained the age of 18, and the daughters were married at the time; or, if not, upon their attaining

to the said age, and being married; with interest after his death; and, in case of the death of any of the children, before the term of payment of their proportion of the sum, declared the portion of the children, so deceasing, should fall and be divided, as two Gentlemen by him named should appoint; 'With power to the said James Stewart to uplift and receive the annualrent of the said principal sum, during the minority of the said children; he always employing the said annualrents for their use and behoof allennarly.' And, in case any part of the principal sum should be thought necessary to be raised, for putting the sons to apprenticeships, with power to James Stewart to uplift such part thereof, as the said Gentlemen should appoint; which his heirs, &c. should be obliged to pay, albeit the term of payment were not then come; and excluded James Stewart's title, as administrator-in-law to his children in the said sum, or any other title to uplift any part of it, otherwise than in manner above provided. And, by a subsequent bond, on the same paper, gave them the sum of 9000 merks, 'and appointed it to be paid and divided amongst them, in the same way and manner, and with the same conditions and restrictions as was provided by the within bond, that the 36,000 merks should be paid and divided, at the sight of, and by the direction of the said two Gentlemen;' reserving to himself power of revocation and alteration over both bonds.

The children of James Stewart pursued Sir Patrick Hepburn Murray, Mr Murray's representative, for the contents of both bonds, with interest from the granter's death.

Answered, There is no interest due on the second bond.

Pleaded for the pursuers, The sum in the second bond is appointed to be paid and divided, in the same manner, and with the same conditions and restrictions as is provided by the other bond; and the condition of the other bond is, That the pursuer's father should uplift the annualrent thereof, for their aliment; as also, in certain circumstances, part of the principal, under the restrictions to which he is made subject.

Pleaded for the defender, Interest is due *ex pacto*, and there is none here made payable: It is not the interest of the first sum, but the principal, the manner of division whereof is determined; and the second is to be divided in the same way.

THE LORDS found interest due.

Reporter, *Drummore.*

Act. R. *Dundas.*

Alt. R. *Craigie.*

Clerk, *Pringle.*

Fol. Dic. v. 3. p. 305. D. Fal. v. 2. No 164. p. 186.

1754. *July 2.*

MACDONELL *against* MACPHERSON.

MACDONELL of Shian, in the year 1739, was debtor in a bill to the deceased Fraser of Belnain.

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to the same creditors. In one of these bonds, interest was allowed from the death of the granter; but, in the other, there was no mention of interest. Found, that interest was due upon both from the granter's death.

No 19.

A purchaser became bound to pay to a