

being valued at 1800 merks in money, which, together with 1000 merks more of money assigned by her to her husband, made the whole amount of her portion to be the sum of 2800 merks; which, with the like sum to be provided by the husband, making in all the sum of 5600 merks, "he became bound to provide and settle, in favour of himself and his spouse and the longest liver of them, in liferent, and the bairns of the marriage in fee;" and the conquest is provided in the same way; and in order to make this provision effectual, the wife, in an after part of the contract, disposed the tenement in favour of herself and husband, in conjunct fee and liferent, and to the heirs of the marriage in fee.

The Lords unanimously found, that though the subject came from the wife, yet as it was given to the husband, *nomine dotis*, the fee was in him, and not in the wife.

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1766. August 2. COUNTESS OF FIFE against SIR JOHN SINCLAIR.

[*Fac. Coll.* IV. p. 260.]

THE late Lord Caithness made a settlement, in which he passed by his own daughter, the Countess of Fife, and likewise the heir-male of his family and honours, and calls to his succession a perfect stranger, *viz.* Lord Woodhall, and the heirs-male of his body; whom failing, his heirs-male of line whatsoever; whom all failing, his own nearest heirs and assignees whatsoever; under which last appellation his daughter, the Countess, was only called. At the time of making this settlement, Lord Woodhall's younger brother, Peter Sinclair, was alive; his immediate elder brother was dead, leaving daughters; and his eldest brother was dead also, leaving a son, the foresaid Sir John Sinclair.

The question was, What was the meaning of the destination to heirs-male of line of Lord Woodhall; whether it meant his heirs-male whatsoever, under which his nephew Sir John was called, or whether it meant his heirs-male, who were also his heirs of line, under which description Sir John was not called, the daughters of Mr Lockhart of Castlehill being the heirs of line of Lord Woodhall, his younger brother, Peter Sinclair, was dead at the time of the competition?

The Lords were all of opinion that the destination meant no more than heirs-male whatsoever, but upon different grounds.

Lord Auchinleck thought that heir-male of line meant no more than what is vulgarly called lineal heir-male, and he did not think that Lord Caithness had in view the distinction betwixt heir-male of line and heir-male of conquest.

Lord Alemore, on the other hand, thought that Lord Caithness had this distinction in view,—that Peter Sinclair, being undoubtedly Lord Woodhall's heir-male, as well as his heir of line, was called,—and that, as Sir John, by his death, was become both Lord Woodhall's heir-male of line and heir-male of conquest, he was also called.

Lord Kaimes thought that, by the words heir-male of line, Lord Caithness meant to distinguish Lord Woodhall's natural heir-male from any heir-male which he might make to himself by a particular deed of settlement.

And lastly, Lord Pitfour was of opinion, that the words, *of line*, were not superfluous in this description, and that, according to the strict propriety of words, Sir John was not called; but he said that Lord Caithness had explained his meaning to call Sir John, by some private letters of correspondence produced, which were written both before and after the settlement was executed.

1766. *August 5.*

CREDITORS of EWART.

THIS man Ewart, when he found himself bankrupt, went to some of his creditors, who were his nearest friends, and informed them of his situation, and with respect to one of them he went so far as to indorse certain bills to him for his payment; but the creditor, knowing that these indorsations would be reducible upon the Act 1696, arrested in the hands of the debtors in those bills, and the question was, Whether he was to be preferred upon these arrestments, or the other Creditors to come in *pari passu* with him?

It was allowed by all the Lords that this case fell neither under the Act 1621, nor the Act 1696; but Lord Pitfour said that there were frauds in this matter at common law, which fell not under either of those statutes: Such was the case of a disposition *omnium bonorum* by a debtor to any one creditor, which was reducible, because there was *fraus in re ipsa*, not upon the statute, but only to the effect of correcting the iniquity, by making it a disposition in favour of all the creditors. Such was the case of *Sir Archibald Grant* and *Tillyfour* in 1748; and such also was the case of *Brown* and *Gillespie*, in 1754, and which comes up to this case, for there *Brown*, the bankrupt, made a sale of certain of his subjects to a brother-in-law of his, for an adequate price indeed, but which some of his creditors, being his friends and nearest relations, immediately arrested in the hands of the purchaser, but the Lords would give them no preference upon this transaction, which they understood to be collusive betwixt the debtor and them. The case was also quoted of processes of forthcoming upon arrestments, in some of which the principal debtor allows decreets to go easily in behalf of the favourite creditors, while he makes opposition to others; notwithstanding which the Court brings them all in *pari passu*, that it may not be in the power of the debtor partially to prefer one creditor to another.

On the other hand, it was said, that there was no law to stop the diligence of creditors, and that it was impossible to know where to stop if the Court should enter into an inquiry where the creditors have got the information which directed them in leading their diligence. It carried, by the President's casting vote, to bring in the arrester and the other creditors *pari passu*;—*dissent.* Auchinleck, Coalston, and Alemore.

This judgment adhered to by a great majority, 16th December 1766.

It was said that another arrester had got his information from the debtor, and it was also objected to his arrestment that it was laid upon an admiral precept, when the cause was neither mercantile nor maritime. But as the Lords differed upon this last point, and as it did not appear but the creditor might have been