

riage in Fee which failing the one Half to return to the Husband's Heirs, or
 other Half to the Wife's Heirs. And if the Sum is applied to reemploy it in
 aforesaid. In which Case by the Laws of all Trafficking Nations as Hollan-
 ders &c. the Money is divided equally betwixt the Heirs of the Man and Wife
 encouraging them to increase their Stock by mutual Industry. But with-
 out a Contract of Marriage obliging the Husband to employ the Con-
 quest for the Use of his Man and Wife in conjunct Fee on
 Heirs of the Marriage which prima facie he is held to the Heirs and the
 Heirs: Was found to constitute the Man Heir of the whole, and empow-
 ering the Heirs of the Marriage to provide the Whole of the said Conquest to
 Heirs of a decedent Marriage, which is held to be a national and effectual Fee
 1600 Anderson contra Bruce. Nor was he tied up from so disposing of a certain
 Sum which he stood obliged by the Contract not only to employ in Manner for
 also to reemploy it the same Way as oft as he applied it. But this Decisio.
 George MacKenzie in his Broadsheet of Feudal Rights tells us was afterwards
 ruled, when Sir George Lockhart presided in the Session. Because the obligation
 to reemploy, argued clearly a Design to give the Husband only a Power of
 application, and not of free disposing, seeing otherwise it could operate
 further, as strong as the Presumption of a Fee of no more being intended
 a conjunct Fee to a Wife than a Liferent, that the Fee will remain in the
 Man, and she be understood a Liferenter only; albeit the Provision en-
 her expressly to dispose: Which Power is interpreted rather as a personal
 resembling that given to Commissioners to dispose Lands, than as an Act of In-
 unless the Provision bear a Power to her and her Heirs to dispose
 Tit. 6. §. 10. When conjunct Fees are taken in a Contract of Marriage
 Man and his Wife and the Heirs of the Marriage to be born; the Husband
 Fee is restrained from altering the Succession ad arbitrium, without a necessity
 or just Consideration, or evacuating the Interest of these Heirs by disposing
 his Heirs of Line; Craig Lib. 2. Tit. 14. §. 6 & 7. Stair Lib. 3. Tit. 5. §. 15. ven-
 is a Case in fin. or by fraudulent or merely gratuitous Deeds in Favour of
 of another Marriage: Because of the Interest of the Wife, and Tether she is sup-
 posed to bring; and that all Obligations should be understood at actus valeant et
 quod operantur. Out a Father may notwithstanding his Obligation in Favour
 of his Heirs of a Marriage, provide a competent portion to another Wife, or
 give suitable Portions to Children of another Marriage; these being just and ra-
 onal Acts arising from the Obligation to provide Shares and Children
 Earl Dumfermling contra his Mother 16 June 1676. Mitchell contra Children
 of Littlejohn 19 June 1677. Murrays contra Murray 3 January 1679. Gibson
 contra Thomson Stair Lib. 2. Tit. 3. §. 41 in fin. Tit. 6. §. 3. Lib. 3. Tit. 5. §. 9.
 Stewart Answers to Dirlet's Doubts Tit. Obligations in Contracts of Marriage
 Favour of Heirs. Nor would an Inhibition served against the Father upon his
 Contract of Marriage hinder him so to do or his Creditors to affect the Subject
 -vided

-vided in Favour of Heirs of the Marriage. For the Import of an Obligation
 to them is only a qualified Destination; that they shall be secure therein in
 Case he die in the Fee undevoted for onerous causes, and not to abridge him
 of the Right competent to all Heirs of disposing if their Condition require it.
 Nor is Inhibition any further effectual, than in so far as the Obligation binds
 Stewart &c. The Fee of a Sum provided by Contract of Marriage to the
 Husband and Wife in Liferent, and to the Heirs of the Marriage in Fee,
 which failing to the Husband's Heirs, is certainly in the Heirs and Descendants
 before the Children exist. Seeing it cannot be in penoenti or hang in the
 Air, and therefore must continue to even after their Existence. A Provision
 of Fee to Children to be born, being in Effect Words at Birth Stewart &c.
 Tit. Fee & Tit. Provisions and Contracts. So where certain Summ of
 were in a Contract of Marriage made over to the Husband and Wife in
 Liferent and to the Heirs of the Marriage: The Husband was bound to use
 Fee, notwithstanding of the Provision of Liferent mentioned a Sum for his
 his Children would never be Heirs to a naked Liferent A Fee. 1601 Thomsons
 contra Lawsons. A Man being obliged in his Contract of Marriage to invest
 himself in some Land betwixt and a precise Day; and he having after he
 was inhibited upon the Contract of Marriage, disposed the Land for onerous Causes
 -ses to a Stranger: It was found that he could not grant any voluntary Right
 of the Heirs of the Marriage; and that the Inhibition was effectual against
 the Disposition 27 July 1724 Douglass contra Douglass and Drummond. Al-
 -beit Provisions in Contracts of Marriage in Favour of Children to be procre-
 -ted, are for the most Part so conceived as to import no more than Destinations
 of Succession, yet they may be so conceived, as to make Children nascituri
 with Regard either to Lands or Money, upon their Existence, proper Creditors
 and not Heirs of Provision, so as they may have it in their Power not only to
 compel their Father in his Lifetime to implement the Contract and divest
 himself of the Fee in their Favour, but even to compete with other onerous
 Creditors according to their Diligences. When it is intended by Contract of
 Marriage, that the Man and Wife should be only Liferenters, and the Fee
 belong to Children to be born without representing them Sir John Nisbet (in
 Tit. Fees) thinks that the Father may be in fact in Liferent for himself, and
 in Fee for the Use and Behoof of the Heirs and Barras, upon whose Existence
 he would be obliged to devide. But in Sir James Stewart's Opinion (Answers
 -vided) it were better in such a Case to settle the Fee upon some other Trustee
 in Favour of the Heirs or Barras. However where a Man by his Contract of Mar-
 -riage obliged himself to provide the equal Half of the conquest to himself for the
 Use and Behoof of the Children of the Marriage in Fee, it was found that he be-
 -came thereby Trustee in the Fee of such Conquest for the Behoof of the Children of
 that Marriage; and that after the Decease of the Mother, Action was competent to
 the only Child of that Marriage, against the Father in his Lifetime, for implement