on the other hand, as lands provided to Children of a Marriag
Indefinitely, would Unquestionably fall to the Eldest son by Law
a father having full power in his life as fiar, to Dispose of th
estate as he pleaseth, should in all law and Reason be Judg
the best arbiter, and his Division among them a pleasure fit
tiold for obliging them to be Dutifull. Hoc ille. Tho this Positi
that lands provided to Children of a Marriage Indefinitely
fall to the Eldest son by Law hath been already Disproved.
Lords once found, that where a husband stood obliged to tak
all Lands or Annualrents to be Conquest during the Marri
to himself and the heirs or bairns of the Marriage, the
heirs and Bairns were Exigetick and Not alternative, so
the father could Not being debtor in the Clause of Conquest
effectually alter it in favour of one of the Bairns 29 January
1678 Stewarts contra Stuart. But where a father in his son
Contract of Marriage setled his lands upon the son and his
in Conjunct fee and liferent and the heirs male to be procrea
of the Marriage, and the Eldest son of that Marriage happen
to be a weak foolish and Extravagant person, his father Neg
=ted him and Disponed his estate to his second son of the sam
Marriage. The Eldest son raised Reduction of that Dispositi
upon this Medium, that the father had no power to alt
the grand fathers settlement. To which it was Answered
tho it were allowed that the father could not Disappoint
Marriage settlement by a Meerly gratuitous arbitrary
he might do it by a Rational deed, and so had a Discretiona
power of settling the estate upon a second son of the same Mar
=age, where the Eldest is undeserving. The Lords found, that
in this Circumstantial case the father might dispose of the
estate to either of the sons of the same Marriage: And theref
assoilzied from the Reduction 10 July 1724 Douglass contra
Douglass. Vid. Sup. pag. 977. 978.

A provision of the Conquest during a Marriage, to the heir
Bairns thereof, doth Not Extend to heretable Rights falling by gift
or succession; but to what is acquired by Industry: And Reache th
only to what More the father had at his death, than when th
Contract was Entered Into, with the burden of all his debts co
=tracted upon the account of such Acquisition Vid. Sup. pag.
279 in fine.

Heirs of provision whether in a particular Subject or
Clauses of Conquest, cannot suffer prejudice by any posterio
Arbitrary or Merely gratuitous deed of the person wha
they Represent; but may Reduce the same and pursue t
heir of line to Implement their provisions 24 January
16

1677. Graham contra Rome 10 July 1677 Carnegy and her husband
contra Smith and her husband. Because they do Not simply Re
=present the Deceased but are partly heirs, partly Creditors. Heirs
as to their predecessors debts and deeds for Onerous Causes, and Credi
=tors as to Gratuitous deeds. And tho the Deceased as fiar of what is
so provided to them, may Dispone; Yet he being also debtor and so fiar
cum modo, cannot Arbitrarly do so against the plain Meaning and
Intendment of the provision. Thus one being obliged to Infeft him
self and his wife in Conjunct fee, and the Bairns of the Marriage
in some tenements within Burgh, and Restricted the wife to
the half in case of Bairns of the Marriage surviving: It was
found that he having thereafter given her a new Infeftment
in the other half in the event of Children surviving, the Children
the heirs of the Marriage, might quarrell the same as Contrary to
the provision in the Contract of Marriage, which could not be
Disappointed by any posterior Gratuitous deed of the father 10 July
1677 Carnegy and her husband contra Smith and her husband.
A father having in his Contract of Marriage provided a Definite
sum to the Eldest heir female, and thereafter Disponed his estate
to her, she Marrying one of his own Name, or who would assume
his Name; And she failing to do so to his second daughter upon
the same terms: The Eldest heir female was allowed to take her
self to her provision by the Contract, and to Renounce the Benefit
of the tailzie, which she was Not obliged to fullfill as being the fa
=thers Voluntary deed, contrary to her Anterior deed 26 July 1677. Ste
=venson contra Stevenson and her husband. A father in his sons
Contract of Marriage having obliged himself to pay a certain
sum to him and his Spouse in Conjunct fee and liferent, and
to the heir [illegible] or Bairns of the Marriage in fee, which failling
to the sons heirs and assigneys whatsoever, in security where
of they were Infeft in the fathers lands; And the son having
after his wifes decease granted a Disposition of the obligation
bearing for certain sums of Money Received, to one therein De
=signed his brother in Law, which was adjudged by the Receivers
Creditors: It was found, that the granters daughter and
only Child of the Marriage was in the Common case of an
heir of provision, and had Interest thereby to quarrell
upon the Act of Parliament 1621 the said Disposition as a Gra
=tuitous deed of the father to her prejudice, which did not prove
its onerous Cause. Tho it was Alledged, that the daughter could
be Considered only as a substitute to her father, and Not as a
Creditor or heir of provision; the grand father and not
Ca