

father being obliged to pay the Money 18 June 1710 contra Executors of Leslie. Nor is there any difference between a father to Assign in favour of himself in the first place and to be heir of the Marriage as substitute to him, and a direct provision to the heirs of the Marriage simply: For in both cases the father is heir and the heir of the Marriage can only conceive a heir of provision to him. So a clause in a Contract of Marriage obliging a father to Assign his estate in favour of himself and the heirs of the Marriage with Inhibition raised thereon by the friends of the testator's Execution was appointed to pass, was found to be void as persons to Dispose Gratuitously to the prejudice of the heirs of the Marriage 16 July 1708 Home contra Home. A clause in form of provision granted by a father to his two Daughters, that in case with heirs of their own body, the Money should Return to the Grantor, was found to make it Return upon the Heirs of the second issue; the Daughters had Manually signed their Sums each to either in case had not heirs of their own body. Which operations being Gratuitous were found to be fraudulent to Exclude the heirs of the first issue. It made the father and his heirs, heirs of provision to the Daughters having heirs of their Bodies, and the terms of payment of the bond were kept, being heirs of provision they had to full fill, but the grantor gratuitously Deed the heir prejudicial 31 January 1679 Drummond contra Drummond. A clause of a bond of provision to a son being, that the portions of such as died unmarried should Return to the heir, and they should make no assignment or gift to Defraud the heir, was found to Intelle them only to a specific Assignment and so much of the principal sum as was necessary for their Breeding or Employment 8 July 1675 Graham contra Morphy. The Reason why bonds of this Nature are void is to be so far personal, as not to be gratuitous assignees, it became sums of Money given as Provisions to Children being granted for a particular use, should cease to be due, when that use is at an end. Vid. Synop pag 411. Again a person who may be heir of line and provision, may enter heir of provision, and Renounce to be heir of line, to the effect any land the predecessor had provided to him whatsoever may be burdened with his debts, and the heir of provision and his land liable only in the second place, to Make up what the other cannot satisfy. Hair lib. 2. tit. 3. § 43. and Conjugal Inheritments. Therefore Depress Inhibitions are not upon Contracts of Marriage to put the heirs in Male fide possessorie Voluntary Gratuitous Dispositions to the prejudice of the provisions therein 31 January 1679 Drummond contra Drummond 24 January 1677 Graham contra Home. But the Law seems heirs of provision against prejudice by posterior arbitrary and Gratuitous Deeds of the predecessor. Helidoll vol. 1. c. 1.

his deeds made to their prejudice for onerous Causes original and Rational Considerations, as to Contract debts. Thus Inhibition used upon a Contract of Marriage in favour of Children of the Marriage before they were born, doth not hinder the father to Contract Lawfull debts with Extraneous persons 2 July 1719 some contra Graham. Nor is a father tied up by the provision made to the heirs of a Marriage from providing a Conjugal Jointure to another wife, or giving, with his portions to Children of a second Marriage 16 June 1676. Mitchell contra Childers of Little John 18 June 1677 Murray contra Murray 8 January 1679 Gilbert contra Thomson 17 Feb. 1710 Marshall contra Marshall & George Harson. Hair lib. 2. tit. 3. § 41. Jus. Hel. 683 lib. 5. tit. 3. § 19. Hel. 2. c. 1. lib. 3. tit. 3. § 21. This being just and Rational, it is not owing from the obligation to provide wives and Children of a second Marriage. A provision in favour of Children of the second Marriage was found to be in the presence of Children of the first Marriage as prejudicial to a sum provided to them, there being a sufficient Competency Remaining to the Children of the second Marriage 22 June 1711 Aiken head contra Aiken head. Heirs of a Marriage by Plaintiff of Conjugal or those provided to all or a part of what the father should acquire or gain during the Marriage, have the same Interest as the other. Heirs of provision to quarrel posterior Arbitrary gratuitous Deeds of the predecessor to the prejudice of what he once acquired, Intending the Design of such provisions in favour of Children or wife of another Marriage. Did not to Impugn Dispositions to Strangers for Onerous Causes, or Rational provisions to other wives or Children 19 June 1677 Murray contra Murray 13 Feb. 1677 Murray contra Murray. A husband being obliged to Employ the Conjugal during the Marriage in case there should be no Children thereof, as to give one half to his own heirs, and the other half to his Proper heirs, was found Impaired failing issue of the Marriage to provide his whole Conquest to his Children of a posterior Marriage 1 December 1680 Anderson contra Bruce.

Sir John Nisbet is of Opinion that if other heirs be de iure to the heirs of a Marriage, the father may Gratuitously by his pleasure alter the Destination as to his other heirs for the heirs of the Marriage only are in obligation, and such substitute in Male Destination, who have thereby no right of obligation, but only from obligations. Doubts and questions of the Law get obliquely in Contracts of Marriage in favour of