

On advising a reclaiming petition, with answers, the LORDS “ adhered to the interlocutor reclaimed against, in so far as it finds that the disposition to the defender, in 1765, in implement of the marriage-contract, was a valid effectual conveyance of the estate to him; but, before further answer, ordained counsel to be heard, in their own presence, upon the question, How far the subsequent settlements and transaction would be effectual against the clause of devolution contained in the said contract.”

No 121.

The pursuer presented a reclaiming petition against this interlocutor, which was followed with answers. Counsel were afterwards heard on the whole cause.

When it was again advised, four of the Judges were of opinion, that although it was a fixed point, that where an estate was settled unconditionally on the heir of the marriage, at the death of his father or mother, the obligation might be fulfilled, by anticipation, during the lifetime of his parents, yet that, in this case, there was a *jus crediti* in all the younger children, in consequence of the clause of devolution, which the mother could not disappoint, and which Norman had it not in his power to discharge till her death.

A considerable majority of the Bench were for assailing the defenders, chiefly on the ground of Norman's discharge and ratification, which they thought effectual; because, by surviving his father, the condition occurred during his life on which the devolution was to take place, and because the clause contained no obligation on him again to denude in favour of any other person, in the event of his succeeding to Powrie. As he would, therefore, (it was observed,) have held the estate in fee-simple, he was clearly entitled to discharge the clause of devolution in his favour.

THE LORDS (26th December 1796) “ repelled the reasons of reduction; and assailed the defenders.”

And, on advising a reclaiming petition, with answers, they “ adhered.”

Lord Ordinary, *Metvæn.* Act. Lord Advocate *Dundas, Rolland, Craigie,*
 Alt. Solicitor-General *Blair, Hay, Tait, Jo. Anstruther, A. Campbell jun.*
 Clerk, *Sinclair.*

R. D.

Fac. Col. No 38. p. 85.

1799. February 26. ALEXANDER EWING against WALTER EWING, and Others.

No 122.

ALEXANDER EWING, in his second son Robert's contract of marriage, disponed certain lands to him and the heirs of the marriage; whom failing, to his own nearest heirs and assignees.

Robert had seven children of the marriage.

Alexander, the eldest son, was unfortunate in trade, and on bad terms with his father, against whom he raised an action, and on the dependence of it, an inhibition, on account of a claim, with regard to which a balance of L. 113 was ultimately found due to his father.

When a father, in his son's contract of marriage, disposes lands to him, and the heirs of the marriage, the son may grant special provisions to the younger child.

No 122.

dren of the marriage; but farther bequests to them, and provisions to grand-children, whose parents are alive and provided for, are reducible as gratuitous, at the instance of the heir of the marriage.

Robert sold the lands to Walter, one of his younger children, for L. 2500, being the price at which he had before unsuccessfully exposed them to public sale.

By a trust-settlement, to take effect at his death, he granted provisions to his younger children, amounting to L. 900, and upwards of L. 300 to some of his grandchildren by them. He had, besides, given L. 100 to one of his younger children during his life, and he was debtor in L. 200, which he had become bound to pay in the marriage-contract of one of his daughters, who was to get no part of the L. 900.

He left L. 400 to his eldest son in liferent, exclusive of his creditors, and to his children in fee; he further discharged the debt of L. 113 due by him, and he had previously given him L. 100. The residue of Robert's fortune, was directed by the settlement to be divided among five of his younger children.

After his father's death, Alexander brought a reduction of the sale as collusive, but the defender was assoilzied.

And the trustees having raised a multiplepounding for division of the funds in their hands, which amounted to L. 2300, Alexander contended, that he, as an heir of provision, could not be gratuitously disappointed; Ersk. b. 3. t. 8. § 38; 8th December 1790, Gordon against the Trustees of Gordon, No 142. p. 13028; 28th July 1778, Spiers against Dunlop, No 141. p. 13026.: That his father, in the amount of the special provisions to the younger children, had exceeded the discretionary powers vested in him; and that the residuary bequests to them, and provisions to grandchildren, whose parents were alive and provided for, were reducible as wholly gratuitous.

It was *answered*, That it is a delicate matter to controul the discretionary power admitted to be vested in the father in such cases, and that in the whole circumstances, the settlement should be *in omnibus* supported.

The Lord Ordinary reported the cause on informations.

THE LORDS "sustained the provisions contained in the trust-disposition executed by the deceased Robert Ewing, in favour of his five younger children, amounting to L. 900 Sterling; and likewise the provision of L. 200 of tocher to Mary his younger child, upon her marriage; but found it was *ultra vires* of the said Robert Ewing to burden his eldest son with any provisions to his grandchildren, or to dispose of the residue of his estate and effects to his prejudice."

Lord Ordinary, *Glenlee*.
D. D.

Act. *Baird*.

Alt. *Hope*.

Clerk, *Menzies*.

Fac. Col. No 115. p. 261.