

given him at marriage; so that as in fact he had received no part of the conquest whatever, he was entitled to an equal share of it even by that contract of marriage. If a father had the power of bestowing only a trifle upon one of his children, as an heir of provision, whilst upon others he bestowed an ample patrimony, the greatest injustice and partiality might be introduced, and the purpose of such provisions and marriage-contracts entirely defeated.

With regard to the mother's executry, it is laid down by our lawyers, that by accepting of a conventional provision from her husband, she is not to be understood to have renounced the *jus relictæ*, or her legal interest in the moveables; consequently as one of her executors, he is entitled to his proportion at whatever distance of time.

The Lords adhered to their Interlocutor.

Act. Clerk. Alt. Elphinston,

D. C.

1800. May 14.

REBECCA HOG and Others, against THOMAS HOG.

In the process, No. 29. p. 8193. brought by Rebecca Hog, her husband Mr. Lashley for his interest, and the assignees of Alexander Hog, against their brother Thomas Hog, as their father Roger Hog's general disponee, to account for the legitim, the pursuers, *inter alia*, claimed to have included in Roger Hog's personal succession 120 shares of the stock of the Bank of Scotland, which he had transferred to the defender *inter vivos*, the greater part of it only a few months before his death, and in order to defeat the claim of legitim, which, he had become apprehensive, would be made against his general disponee.

The pursuers contended, That this had been done *in fraudem* of the claim of legitim; Ersk. B. 3. Tit. 9. § 16. and that the stock was held in trust for Roger Hog during his life.

The defender hardly disputed the object of the transference; but maintained, that it was absolute in his favour, and therefore sufficient to exclude the claim; 28th February 1775, Agnew against Agnew, No. 36. p. 8210.

To ascertain the fact, the defender, and others acquainted with Roger Hog's affairs, were examined as havers; the books of the Bank and of the deceased were inspected; and other written evidence was produced.

The Lord Ordinary found, "That the 120 shares of the stock of the Bank of Scotland, transferred to and vested in the defender by the late Roger Hog of Newliston, anterior to the death of the said Roger Hog, are not subject to the pursuer's claim of legitim."

No. 1.

No. 2.

The legitim may be disappointed by the gratuitous deeds of the father *inter vivos*.

No. 2.

Upon advising a petition, with answers, it was

Observed on the Bench : The proof establishes, that the stock was absolutely transferred to the defender *inter vivos*. A father, in *liege pousitie*, has complete power of administration over his effects. He may change moveable into heritable securities. It is not relevant to inquire into his motives. The case of Agnew is decisive against the claim. The passage in Mr. Erskine, B. 3. T. 9. § 16. is loosely expressed.

The Lords, with some hesitation on the part of one Judge only "adhered."

Lord Ordinary, *Armadale*.
Alt. *Connell*, et alii.

Act. Jo. Clerk, *Gillies*, et alii.
Clerk, *Sinclair*.

D. D.

Fac. Coll. No. 183. p. 394.

* * On appeal, the House of Lords (16th July 1804) "declared, That such
" shares of the stock of the Bank of Scotland, standing in the name of the
" respondent Thomas Hog, at the death of the said Roger Hog, as shall
" appear to have been transferred to the said Thomas Hog, under any
" agreement or understanding that he would invest the same in land after
" the death of the said Roger Hog; and also such shares, the dividend
" whereof shall appear, notwithstanding the transfer of same, to have been,
" after such transfer, ordinarily received for the account of and applied for
" the use of the said Roger Hog, ought to be considered as subject to the
" pursuer's claim of legitim; and it is therefore ordered and adjudged, That
" all such parts of the interlocutors complained of in the said appeal, as
" are inconsistent with these declarations, be, and the same are hereby
" reversed, and in so far as they are agreeable thereto, the same be, and are
" hereby affirmed: And it is further ordered, That the cause be re-
" mitted back to the Court of Session in Scotland, to ascertain whether any,
" and which of the shares in the Bank of Scotland, agreeably to the de-
" clarations aforesaid, are subject to the pursuer's claim of legitim," &c.