Tuesday, June 2.

FIRST DIVISION.

COATS' TRUSTEES *v.* COATS.

Parent and Child—Succession—Legitim—Collatio bonorum inter liberos.

A testator died predeceased by his wife and survived by five children. By his trust-disposition and settlement he conveyed his whole estate to trustees and made certain provisions for each of his five children. He had in his lifetime made to all of his children advances of a quality rendering them subject to collation. One child claimed legitim; the other four accepted their testamentary provisions. The free moveable estate amounted approximately to one million pounds.

Held that the fund to one-fifth of which the claimant was entitled was half the free moveable estate, *i.e.*, half a million, and not that sum plus the advances to the claimant, nor that sum plus the advances to all the children.

Nisbet's Trustees v. *Nisbet*, March 10, 1868, 6 Macph. 567, *disapproved.*

A Special Case for the opinion and judgment of the Court was presented by (1) William Hodge Coats, John Alexander Spens, and Ernest Symington Coats, the trustees acting under the trust-disposition and settlement of Archibald Coats, dated 6th November 1901 (*first parties*); (2) Miss Evelyn Dudley Coats, a daughter of Archibald Coats (*second party*); (3) the said William Hodge Coats and others, being the whole children (or their representatives) of the said Archibald Coats other than the said Miss Evelyn Coats (*third parties*); (4) and (5) the children of two married daughters of Archibald Coats (*fourth and fifth parties*). The question between the parties was the way in which the legitim claimed by the second party should be calculated.

Archibald Coats, the testator, died on 11th May 1912, predeceased by his wife and survived by five children, two sons and three daughters, who were all of full age at the date of his death. The testator had no marriage contract. By his trust-disposition and settlement, dated 7th March 1907, the testator conveyed his whole means and estate, heritable and moveable, to trustees, and directed them, after payment of debts, legacies, &c., to divide the residue of his estate briefly as follows:—One-tenth of his moveable estate to his daughter Evelyn Dudley Coats in liferent allenarly, non-assignable and alimentary, and to her children, if any, in fee, and the whole of his heritable estate and the remaining nine-tenths of his moveable estate among his other four surviving children. The provisions in favour of his children were declared to be in full satisfaction of legitim, bairns' part of gear, and all other claims competent to them through the decease of the testator, and it was directed that any child claiming legitim should forfeit all right to any provision made under the settlement.

The moveable estate of the testator was estimated to amount to about £1,000,000 net, and for the purposes of this case the amount of advances which the children had received and would have required to collate if all had claimed legitim were respectively — Miss Evelyn Dudley Coats, £20,000; her two sisters, £100,000 each; and her two brothers, £60,000 each. Accordingly the parties were agreed that if all the said advances to and provisions in favour of the truster's children were to be taken into account in calculating the amount of legitim, the second party would receive as her share of said fund a larger amount than if none of said advances and provisions, or only the advances to and provisions for her, were taken into account.

The first, third, fourth, and fifth parties *contended* (1) that none of the advances to or provisions in favour of the truster's children fell to be taken into account in ascertaining the amount of the legitim fund, which consisted of one-half of the truster's moveable estate as at his death, or alternatively (2), that the legitim fund consisted of one-half of the moveable estate of the truster as at his death, plus the amount of the advances and provisions made to the second party only, and that from her one-fifth share of this fund there fell to be deducted the amount of said advances and provisions to her.

The second party *contended* (1) that in ascertaining the amount of the legitim fund, not only the advances to herself, but also the advances to the other children of the truster, fell to be taken into account, and that she was entitled, as her share of legitim, to one-fifth of the fund so ascertained under deduction of the advances to herself. Alternatively (2) the second party maintained that none of the advances to herself or the other children fell to be taken into account in ascertaining her share of legitim.

The *questions of law* for the opinion of the Court included the following—"1. For the purpose of ascertaining the second party's share of legitim, does the legitim fund consist of—(*a*) one-half of the moveable estate *in bonis* of the truster at his death; or (*b*), that sum plus the advances to and provisions made by the truster in favour of the second party as set forth in articles, 6, 7, and 8 of the case; or (*c*), that sum plus the advances and provisions made by the truster in favour of all his children as set forth in articles 6, 7, 8, 9, and 10 of the case?"

Argued for the second party — (1) The legitim fund consisted where there was no widow of one-half the free moveable estate, and the calculation of the amount thereof which any child was entitled to was to be made by adding to the legitim fund the advances made to all the children and dividing by the number of children, and the sum so obtained less the advances already made to any child was the amount which that child was entitled to claim—*Nisbet's Trustees* v. *Nisbet*, March 10, 1868, 6 Macph. 567, esp. Lord Cowan at 573; *Fisher* v. *Dixon*, July 6, 1841, 3 D. 1181, Lord Fullerton at 1183; *Young* v. *Young's Trustees*, 1910 S.C. 275, Lord Johnston at p. 292-293, 47 S.L.R. 296;

Ersk. Inst., iii, ix, 24-25; Bell's Prin., 1587-1589; M'Laren on Wills (3rd ed.), vol. i, 164-7—and that was the sum which, if the child accepted its conventional provision, enured to the benefit of the general disponee. On the parent's death each child who had not discharged his rights took a vested interest in his particular share either liquidated or admitting of liquidation—*Fisher* v. *Dixon*, June 16, 1840, 2 D. 1121, *per* Lord Fullerton at p. 1138, in House of Lords April 6, 1843, 2 Bell's Ap. 63, Lord Cottenham at p. 73-74—and the amount which each could claim did not vary according as the other children did or did not claim. It was true that the doctrine of *collatio inter liberos* involved that there must be more than one child entitled to claim legitim, but it was not necessary that there should be more than one actually claiming—*Fisher* v. *Dixon* (*cit. sup.*), Lord Cottenham at p. 74. The cases cited by Lord Stormonth Darling in *Collins* v. *Collins' Trustees*, January 4, 1898, 35 S.L.R. 641, at 642-3, viz., *Lashley* v. *Hog*, July 12, 1804, 4 Pat. 581, Lord Eldon at p. 642; *Clark* v. *Burns & Stewart*, January 27, 1835, 13 S. 326; *Breadalbane* v. *Chandos*, August 16, 1836, 2 Sh. & M. 377; *Keith's Trustees* v. *Keith*, July 17, 1857, 19 D. 1040, only supported the first proposition and not the second, for in these cases owing to discharges only one child was in a position to claim legitim. The case of *Nisbet's Trustees* (*cit. sup.*) decided the amount of the share that vested in the child. *Monteith* v. *Monteith's Trustees*, June 28, 1882, 9 R. 982, 19 S.L.R. 740, though disapproving of the assignation theory of *Nisbet's Trustees*, did not, and in fact could not, overrule the decision there. The present argument did not maintain nor depend on any assumed assignation from the non-claiming children to the general disponee. (2) But alternatively, if collation was only applicable and required in a distribution between children actually claiming, then, as here, only one child was claiming. She was not bound to collate—*Keith's Trustees* v. *Keith* (*cit. sup.*), Lord President M'Neill at p. 1057; *Breadalbane* v. *Chandos* (*cit. sup.*); *Clark* v. *Burns & Stewart* (*cit. sup.*).

Argued for the first, third, fourth, and fifth parties—(1) The second party could not compel the other children who were not claiming to collate. Collation was rather an obligation than a right. It was a condition of the right to make a claim for legitim—Ersk., iii, 9, 24; Stair, iii, 8, 26. This condition of collation could only be enforced on and by those actually claiming—*Clark* v. *Burns & Stewart* (*cit. sup.*), Lord Moncreiff at p. 334; *Keith's Trustees* v. *Keith* (*cit. sup.*), Lord Ardmillan at p. 1052, Lord Curriehill at p. 1066; *Breadalbane* v. *Chandos* (*cit. sup.*), Cottenham, L. Ch., at p. 401; *Monteith* v. *Monteith's Trustees* (*cit. sup.*), esp. Lord Justice-Clerk Moncreiff at p. 988, and Lord Rutherfurd Clark at p. 1008; *Young* v. *Young's Trustees* (*cit. sup.*), Lord Kinnear at p. 287; *Collins* v. *Collins' Trustees* (*cit. sup.*); Bell's Prin., sec. 1589. The theory in *Nisbet* that the general disponee by assignation found himself in the shoes of the other children was unsound, and was refuted in *Monteith* (*cit. sup.*). It was true the assignation theory was not maintained in the present case, but, apart from its disapproval thereof, the operative decision in *Monteith* was favourable to their contention. (2) Moreover, where there was only one claimant, and other children who could have claimed but were not so doing, the claimant was bound to bring his or her advances into computation. This might not be strictly collation, but was on the ground of that wider equity which was given effect to in *Young's Trustees* (*cit. sup.*).

At advising—

LORD PRESIDENT—This is one of those comparatively rare cases in which we are asked to say what is the law of Scotland. It would be strange indeed if only now, for the first time, the Court were invited to define the true limits and scope of the doctrine of collation *inter liberos*; but undoubtedly to decide this case it will be necessary to expound the doctrine once more, I cannot think for the first time.

The facts are few and simple. The testator died on 11th May 1912, survived by five children. By his trust-disposition and settlement purporting to convey his whole estate he made certain provisions for each of his five children. He had already, during his lifetime, made to all of them advances which are of a quality which rendered them subject to collation. Only one child claims legitim. The other four refrain. They are content to take their testamentary provisions. The free executry amounts, we are asked to assume, to £1,000,000, and the only question put to us is this—what amount of that sum must be paid to the child who claims legitim? I answer, without hesitation, £100,000, being one-fifth of one-half of the free executry.

My reason is, because where only one child claims legitim there is no room for the doctrine of collation. *Collatio bonorum inter liberos* is an obligation incumbent by the law of Scotland on children—I lay stress on the plural—on children who are actually claiming their share of the legitim fund, to compel other children who are also claiming on the fund to bring into computation advances which they have received from their father during his lifetime. It is an equitable doctrine introduced for the purpose of securing equality in the distribution of the legitim fund among the children who are actual claimants on the fund. It has no place among others than children. Its basis is a double fiction. It assumes that the father has paid a part or the whole of his indebtedness at a time when no relationship of debtor and creditor exists between the father and the child. It further assumes that the payment is made out of the legitim fund although confessedly the legitim fund is at the time non-existent. Now it is apparent that a doctrine which rests on a foundation so narrow and so purely artificial is not susceptible of what is called logical extension. The attempt to give it reasoned expansion will inevitably end in confusion. The subtleties and intricacies, such as they are, which have encrusted

themselves upon the doctrine are due entirely to a failure accurately to observe the terms in which the doctrine is explained by Stair and Erskine.

The situation in a case such as this is singularly free from complexity. The whole estate passes under the father's settlement subject to claims. One claim is that of a child for her share of the legitum fund. She may take it or she may leave it. If she takes it, the debt is extinguished; if she leaves it, it passes under the father's settlement—that is all.

Now after the closely reasoned opinion of Lord Fullarton in the case of *Fisher* v. *Dickson*, (1840) 2 D. 1121, and the admirably condensed summary of that opinion in the judgment of Lord Murray (p. 1149), it is not easy to explain what the Lord President (Dunedin) would, I have no doubt, have called the divergent rills. It would be idle indeed to review the authorities on this question. So far as authorities prior to the year 1857 are concerned, that task has been well accomplished by Lord Ardmillan in his judgment in *Keith's Trustees*, (1857) 19 D. 1040, which was affirmed by this Division of the Court. And so far as authorities down to 1898 are concerned, the task was equally well accomplished by Lord Stormonth Darling in a judgment which was not submitted to review–*Collins* v. *Collins' Trustees*, (1898) 35 S.L.R. 641. It would be equally idle, I think, to summarise the results of that review, for that task has been accomplished, once and for all, by Lord Rutherfurd Clark in his opinion in *Monteith* v. *Monteith's Trustees*, (1882) 9 R. 982, which I for my part adopt in its entirety. A close examination will show that it is exhaustive and leaves no points open. It would be idle indeed to attempt to repeat in other and inferior language what Lord Rutherfurd Clark has so well expressed. His judgment was adopted and approved by, I think, the Lord President (Dunedin), and certainly by Lord Kinnear in the comparatively recent case of *Young* v. *Young's Trustees*, 1910 S.C. 275. Nothing could be clearer than Lord Kinnear's opinion when he said (at p. 287)—"I think it is the result of all the authorities that collation of legitim is an equitable claim competent only to the children competing on the legitim fund, who are entitled to draw in advances which another child may have received in circumstances which give rise to that equity." And again—"It is obvious that the right which is described at full length as *collatio inter liberos* is a right competent to competing children alone."

But I must acknowledge that I cannot follow Lord Kinnear when he says that he thinks that the exposition of the doctrine given by Lord Rutherfurd Clark in *Monteith's Trustees*, and by himself in *Young's Trustees*, is not inconsistent with anything that was decided in *Nisbet's Trustees* v. *Nisbet*, (1868) 6 Macph. 567. I think it was inconsistent with what was decided in *Nisbet's Trustees*, that *Nisbet's Trustees* proceeds on a complete misconception of the principles of law laid down and applied in *Fisher* v. *Dickson*, 2 D. 1121, that the reasoning on which the judgment rests is fallacious, that the judgment itself cannot be supported, and that this decision can no longer be regarded as sound law. A close examination of *Nisbet's Trustees* clearly shows that the learned Judges of the Second Division there understood that they were deciding the point before them for the first time. It is equally clear from an examination of that decision that the point which they believed they were deciding was the very point that was decided in *Monteith's Trustees* and that we are invited to decide to-day. That is unmistakeable from the abridgment of the argument found in the report. It is equally clear from the opinion of Lord Neaves, who says—"There is no doubt that the advances in question would need to be collated in a direct competition between several children claiming the legitim, but the question is, whether this equally holds, where all the other children accept the conventional provisions instead of legitim." Now that is the very question decided in *Monteith's Trustees*, and which we are to decide to-day. It is not difficult to trace the fallacy which pervades the judgment in *Nisbet's Trustees*. It is this, that a child who refrains from claiming his debt—his share of the legitim—does not extinguish the claim, but keeps it open and assigns it to the general disponee, and with it a right which the child himself can only claim if he were asking payment of the legitim fund in competition with other children, to compel these other children to bring into computation the advances which they have received. As Lord Cowan puts it, the general disponee takes the place of the child in every question that can be raised with regard to the amount of the claim upon the legitim fund, even although the child himself could not claim it. The same fallacy reappears in a somewhat different form in Lord Benholme's opinion, where he says there is no distinction between the legitim fund proper and the collated fund, and that the presumed assignation by a child who refrains from claiming legitim carries to the general disponee both the legitim fund and the collated fund. Now that never was at any time the law of Scotland. It is contrary to all the authorities prior to *Nisbet's Trustees* and subsequent to *Nisbet's Trustees*. There will be found in *Monteith's Trustees* what I regard as a final and exhaustive exploration of the doctrine of *collatio bonorum inter liberos*. It is in complete harmony with all the authorities, and I think we must now hold that *Monteith's Trustees* has implicitly, if not explicitly, overruled *Nisbet's Trustees*. Holding that view, it appears to me that we cannot otherwise answer the question put to us here than thus—1 (*a*) in the affirmative; 1 (*b*) and 1 (*c*) in the negative.

LORD MACKENZIE—The foundation of the second party's argument upon the first point in the case is that the doctrine of *collatio bonorum inter liberos* applies, although she is the only child claiming legitim, and although the other members of the family are content with their conventional provi-

sions. According to her contention the matter ought to be dealt with as if all the brothers and sisters were claiming legitim. The amount of the legitim fund, the second party argues, is not one-half of the moveable estate of the deceased which was *in bonis* at the date of his decease—it is one-half plus the funds previously advanced to children which are properly subject to collation. Collation, according to this theory, is not a mere option. It is a quality of the right which vests, and affects at death the interest of the child in the legitim fund. The benefit which the general disponee takes is what is left, *i.e.*, is not in this case each child's one-fifth of one-half of the moveable estate, but that proportion diminished by the amount of the advances which have been made to the child by the parent during his life.

It was maintained on behalf of the second party that her contention did not depend on the view that the general disponee is in the position of an assignee of the other children who do not claim—a view which was founded on expressions in the judgment of Lord Cottenham in *Fisher* v. *Dixon*, 2 Bell's Ap. 63, and is the basis of the reasoning of Lord Cowan in *Nisbet's* case, 6 Macph. 567. That view is not consistent with what was said by the majority in *Monteith's* case, 9 R. 982. The argument was that, although in *Monteith* the case of *Nisbet* was considered solely from the point of view of whether a general disponee could be regarded as an assignee, there was involved in *Nisbet* a further question, which was not dealt with in *Monteith*, viz., what is the amount of the share that vests in the child? As I understand the contention, counsel for the second party adopted the view of Lord Benholme in *Nisbet*, that in fixing the amount which vests in each child the amount of the advances which are properly subject to collation must be taken into account. If the amount of the advances is large enough to operate a discharge of the child's share of legitim, then it is said this enures to the benefit of the other child or children, although the benefit of the acceptance by the child of its conventional provisions would enure to the general disponee. This contention appears to me to be contrary to the weight of authority. The true view, in my opinion, is that the legitim fund is one-half or one-third, as the case may be, of the moveable estate. An aliquot part vests at death, subject always to the equity which exists between children who may at a later stage come in to compete, by which a duty is imposed on each to collate the advances received during the lifetime of the father. The legitim fund is not the one-half or one-third plus the advances. Collation does not operate automatically when there is more than one child entitled to take. It operates only when there is competition between children at the period of distribution. The passage in Ersk. Inst. iii, 9, 24, bears this out. The answer to the question, what is the amount of the share that vests, depends upon the answer to the earlier question, who are to be brought in. In my opinion children cannot be brought in who are not competing.

We had an elaborate argument with a citation of all the authorities. In such a question I think it enough to state the conclusion to which I come ,with the authorities which seeem to me to support it, viz., —*Clark* v. *Burns & Stewart*, 13 S. 326, Lord Moncreiff at p. 334; *Keith's Trustees* v. *Keith and Villiers*, 19 D. 1040, Lord Ardmillan at p. 1052, and Lord Curriehill at p. 1066; *Breadalbane* v. *Chandos*, 2 S. & M'L. 377, at p. 401; *Monteith* v. *Gifford*, 9 R. 982, Lord Justice-Clerk at p. 988, and Lord Rutherfurd Clark, at p. 1008; *Young* v. *Young's Trustees*, 1910 S.C. 275, Lord Kinnear at p. 287; *Collins* v. *Collins' Trustees*, (1897) 35 S.L.R. 641, Lord Stormonth Darling. More particularly, I refer to the opinion of Lord Rutherfurd Clark in *Monteith*, and the endorsation of that opinion by Lord Kinnear in *Young's Trustees*. The second question is, whether, if the advances of all are not to be brought into account, the advances to the second party herself must be. I do not think they ought. Regarding, as I do, the judgment in *Monteith's* case to be sound, the case of *Nisbet* ought not in my opinion to be followed. The reasoning upon which that judgment proceeds is inconsistent with *Monteith*. Nor can I hold that the conclusion reached in *Nisbet's* case ought to be supported upon what was termed a wider equity than is involved in collation, under which the second party, it was said, was bound to impute the amount of the advance. I refer on this matter to what was said by Lord Ardmillan in *Keith* and Lord Stormonth Darling in *Collins*.

I therefore concur in the judgment proposed.

LORD SKERRINGTON—I agree with your Lordships. Shortly stated, the contention of the second party comes to this, that collation operates automatically and *ipso jure* in every case where a person dies survived by several children who are entitled to claim legitim, and that upon the death there vests in each of the children a right to a share of the legitim fund neither more nor less than what each child would receive if all of them collated.

The best that can be said in favour of this view is that it is perhaps the logical consequence of the decision in the case of *Nisbet*, 6 Macph. 567. For my own part I am unable to reconcile that case with the later case of *Monteith's Trustees*, 9 R. 982, and I adopt the statement of the law of collation which was made by Lord Rutherfurd Clark in *Monteith's* case. In the present case, as there is only one child claiming legitim, the doctrine of collation cannot be invoked either in her favour or to her prejudice.

LORD JOHNSTON was absent.

The Court answered sub-head (*a*) of the first question of law in the affirmative, sub-head (*b*) in the negative, and sub-head (*c*) in the negative.

Counsel for the First, Third, Fourth, and Fifth Parties — Macmillan, K.C. — C. H. Brown. Agents—J. & J. Ross, W.S.

Counsel for the Second Party—Blackburn, K.C. — Watson, K.C. — Armit. Agents—Hope, Todd, & Kirk, W.S.

Tuesday, June 16.

SECOND DIVISION.

[Lord Skerrington, Ordinary.

VERNEY *v.* VERNEYS.

Entail—Validity—Prohibitions—Power to Heir of Investiture to Appoint among Members of his Family—Power to Sell—Entail Amendment (Scotland) Act 1848 (11 *and* 12 *Vict. cap.* 36), *sec.* 43.

A deed of entail conferred on certain heirs of the investiture a power to appoint a successor to the entailed estate in each case among any members of his family, and "failing such appointment" devolved the estate on substitute heirs of entail. It provided, further, that each heir of entail should have full power without consent to sell the whole or any part of the lands, "providing always that . . . the price realised . . . be re-invested in the purchase of land either in Scotland or in England or Wales, which land if in Scotland shall be entailed by a valid deed of strict entail, . . . and if in England or Wales by a valid settlement containing all such provisions as counsel shall advise on the same series of heirs," and subject to the same conditions as contained in the original deed of entail. The deed provided, further, that until so applied the price should "be consigned in bank or invested in name of a trustee" upon trust for these purposes, eventual purchasers to be "fully exonerated and discharged by the receipts of the trustee or trustees in whose name" the price should be consigned or invested. In an action at the instance of an heir of the investiture for declarator that the entail was invalid, and that he was entitled to deal with the lands as a fee-simple proprietor, *held* (*diss.* Lord Salvesen) that neither the power of appointment nor the power to sell infringed the prohibitions against altering the order of succession or alienation, and that the entail was valid.

Harry Lloyd Lloyd Verney, Esquire, of Carriden, in the parish of Bo'ness and Carriden and county of Linlithgow, *pursuer*, brought an action against Gerald, Ulick, and Desmond Lloyd Verney, his three eldest sons, and against himself as their curator and administrator-in-law, and also against his sister Mrs Morforwyn Lloyd Verney or Fanshawe, wife of the Reverend Gerald Charles Fanshawe, M.A., and residing with him at the Vicarage, Godalming, Surrey, and against Mr Fanshawe as her curator and administrator-in-law, *defenders*, for declarator that a disposition and deed of entail, dated 28th December 1891, and recorded in the Register of Entails the 7th, and in the Register of Sasines for publication and the Books of Council and Session for preservation the 15th of January 1892, whereby his brother James Hope Lloyd Verney, and his father Lieutenant-Colonel George Hope Lloyd Verney of Clochfaen, Llanidloes, North Wales, disponed to the pursuer and the substitute heirs of entail mentioned in the deed certain lands in Linlithgowshire, was invalid and ineffectual as regards all its prohibitory, irritant, and resolutive clauses, and that notwithstanding these clauses or any other fettering clauses in the deed he was entitled to hold the lands in question free from the conditions of these clauses and to deal in all respects with them as unlimited fiar. The pursuer's three sons, who were in pupillarity, and to whom a *curator ad litem* was appointed, were the three next heirs in succession under the destination, and the pursuer's sister, who did not appear, was the next heir in existence after them.

The deed of entail contained, *inter alia*, the following destination — "To and in favour of me the said George Hope Lloyd Verney, whom failing to me the said James Hope Lloyd Verney, whom failing to such son or daughter of me the said James Hope Lloyd Verney as I shall by writing under my hand appoint, and failing such appointment to the heirs-male of my body, whom failing the heirs-female of my body, whom failing Harry Lloyd Lloyd Verney, second son of me the said George Hope Lloyd Verney, whom failing to such son or daughter of the said Harry Lloyd Lloyd Verney as he shall by writing under his hand appoint, and failing such appointment to the heirs-male of his body, whom failing the heirs-female of his body, whom failing Edward Vortigern Lloyd Verney, third son of me the said George Hope Lloyd Verney, whom failing to such son or daughter of the said Edward Vortigern Lloyd Verney as he shall by writing under his hand appoint, and failing such appointment to the heirs-male of his body, whom failing to the heirs-female of his body, whom failing Mary Levison Lloyd Verney, surviving daughter of me the said George Hope Lloyd Verney and the heirs-male of her body, whom failing the heirs-female of her body, whom all failing to the nearest heirs and assignees whomsoever of me the said James Hope Lloyd Verney, the eldest heir-female throughout the whole course of succession succeeding always without division and excluding heirs-portioners."

It provided further as follows—"Reserving always to me the said George Hope Lloyd Verney, with the written consent of me the said James Hope Lloyd Verney, if living, and to each heir of entail subsequent to me the said George Hope Lloyd Verney, full power by himself or herself alone to sell and dispone the whole or any part or parts of the said lands, subjects, and others without the consent of any subsequent heir called under the destination before written, and without the necessity of obtaining the authority of the Court, but subject always