of my opinion, that when preference is claimed on legal diligence, especially when that diligence is used to reduce onerous transactions as being *spreta auctoritate*, that if there be any defect in the diligence, equity cannot interpose to supply it. And I observed further, that there was more here wanting than the letter S, because Sir Robert Milne could not be inhibited on both bonds. But on the question, it carried, to adhere to my interlocutor, renit. President et me."

JEAN CRAIK and JOHN STEWART her husband, - - - - } *Appellants.*

GRIZEL CRAIK, only surviving daughter of Adam Craik, - - } *Respondent.*

House of Lords, 25*th March* 1757.

ENTAIL—PROVISION—EQUITY.—An entail empowered the next heir to grant provisions to his younger children; but he conceiving that the entail so executed was in fraud of his father's marriage-contract, which provided the fee of the estate to the heir of the marriage, disponed the estate in fee to his own daughter, and did not exercise the powers conferred of granting provisions. Held, on reduction of the son's settlement, as in fraud of the entail, that when she was deprived of the benefit of her father's settlement, equity will support that deed to the extent of a reasonable provision, although the powers of the entail in this respect had not been exercised.

For the circumstances of this case see p. 542.

The House of Lords, in affirming the judgment of the Court of Session, specially reserved power to the respondent to claim a provision out of the estate, her father having, by the entail of 1723, a power to provide such provisions to younger children; and in the present action she now contended that the settlement of the estate on her by her father, although adjudged to have been *ultra vires* of the father, yet

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ought to be sustained to the extent of a reasonable provision, and concluding to have that portion ascertained. Proof was ordered of the rental of the estate. It was proved that this was only a trifle more than what it was at her father's death.

Nov. 19, 1755. Feb. 25, 1756.

The Court, by a majority, found that the pursuer was entitled to the sum of L.1500 sterling, as a provision out of the estate of Duchrae.

Against these interlocutors the present appeal was brought by the appellant, and a cross appeal by the respondent, complaining of the interlocutors in so far as they only allowed her a provision of L.1500 out of the estate.

Pleaded for the Appellants:—That in law the respondent had no title to a provision out of the estate, as none such had been granted her. And it does not follow that, because her father, Adam Craik, had a power to grant such provisions—a power which he never exercised, that therefore his daughter has a claim for such provision. On the contrary, such power never having been exercised, any provision to the respondent can only be conferred by the appellant's consent; and the appellant, moved by equitable considerations, having consented that a reasonable provision be awarded to her, ought not to have been burdened with a provision so great as the Court has allowed, which is exorbitant, and far exceeds what this small estate can bear. The sum of L.1500 is near thirteen years purchase of the estate.

Pleaded for the Respondent:—The estate of Duchrae originally stood vested in her father in fee, under his marriage-contract. Thereafter the entail was executed by his father, under which the appellant was favoured; while the deed of her own father,

which conveyed the estate to her as his only daughter, was set aside. When, therefore, she is deprived from taking the entire benefit, equity will support her father's settlement so far as to hold it as an exercise of the power conferred on him by the entail to the extent of a reasonable provision. Looking therefore to the value of the estate—to the intention of the testator to bestow the whole upon her—the manner in which his intention was disappointed—the provision allowed by the Court is reasonable in the whole circumstances.

After hearing counsel, it was

Ordered and adjudged, that the appeals be dismissed, and that the last mentioned interlocutor of 25*th February* 1756, *and also so much of the said first mentioned interlocutor of the* 19*th November* 1755 *as is not thereby varied, be affirmed.*

For Appellants, *C. Yorke, Walter Stewart.*
For Respondent, *Robert Dundas, Al. Forrester.*

Note.—Unreported in the Court of Session.

THE RIGHT HONOURABLE LORD GRAY and LADY GRAY, - - } *Appellants.*
MAGISTRATES and TOWN COUNCIL OF PERTH, - - - - } *Respondents.*

House of Lords, 30*th March* 1757.

SALMON-FISHING—GRANT—DRAWING NETS ON BANK.—A prior grant to a party of the salmon-fishing in and round an island on a river, without any limitation as to drawing the nets, does not prevent the Crown from making a posterior grant to another party whose lands are opposite to the island; and where the channel is so narrow as not to permit both