

No 145. the father's own judgment, for repelling the reasons of reduction pleaded by Sir William, of his father's deed; and therefore, in giving their votes, expressed themselves thus, that the deed was not so irrational as to be reduced.

Nevertheless it carried, "that the deed was irrational, and the same was accordingly reduced." But as this was by the narrowest majority, so the case appeared so dubious to the President, when he gave his casting vote, that he added, that he might have been of another opinion had Sir John given any other subject, though to the same extent; but as the subject given was land, he thought it irrational.

The children having reclaimed, the fact came out to be, that the disposition by Sir John had not been made to the children themselves, but to their mother his second wife, upon whom he had depended for her dividing the subject among the children, but without laying her under any restraint to that effect; and then, without hesitation, "the same was reduced."

Kilkerran, (PROVISION TO HEIRS AND CHILDREN.) No 11. p. 465.

1749. February 24.

The CHILDREN of JOHNSTON and his CREDITORS, Competing.

No 146.

THE deceased Johnston of Kirkland granted bonds of provision to Alexander and Margaret Johnstons, his younger children, payable at the first Whitsunday or Martinmas after their marriage, or their age of 21 years, reserving a power to alter; whereon they having claimed to be ranked with his other creditors, the Lord Ordinary, "in respect of the reserved power to alter, found they could not be ranked with the onerous creditors."

Against this interlocutor the said Alexander and Margaret having reclaimed, the Lords proceeded on a different *ratio decidendi*, in these words:

"Having considered the petition, and it appearing to the Lords, that the concordance of effects belonging to the father at his death is not sufficient to instruct that he had sufficient effects to pay his debts and children's provisions, they refused the petition, and adhere."

Kilkerran, (PROVISION TO HEIRS AND CHILDREN.) No 12. p. 465.

1761. February 7.

JAMES BRUCE of Kinnaird *against* Mrs AGNES GLEN, Widow of the deceased David Bruce of Kinnaird, and her CHILDREN.

No 147.
After providing the estate to the eldest

DAVID BRUCE of Kinnaird, in his marriage-contract with Mrs Marion Graham his first wife, in consideration of 10,000 merks received with her, became bound to settle his whole lands and estate of Kinnaird and others upon the heirs-male