

the interest thereof, and the time from which the same should commence. And it is further ordered, that so much of the interlocutor of the 15th of February 1763, as finds that Lord Forbes is not accountable for any part of the rents of the lands prior to the date of the said interlocutor; and also so much as confines the account of the feu-duties and casualties, to be taken from the date of the summons only, be, and the same are hereby reversed; and it is hereby declared that the appellant, Lady Forbes, is entitled to an account of all the said rents, feu-duties, and casualties, paid to, and received by, the respondent's father, after her right accrued. And it is further ordered, that the said two last mentioned interlocutors, in all other respects, be hereby affirmed; and that the Court of Session do give all necessary directions for carrying this judgment into execution.

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DALLAS
v.
DALLAS.

For Appellant, *C. Yorke, John Maddocks.*

For Respondent, *Al. Wedderburn, Alex. Lockhart.*

Note.—Unreported in the Court of Session. Lord Mansfield presided in giving judgment.

WILLIAM DALLAS,	-	-	-	-	<i>Appellant ;</i>
JAMES DALLAS	-	-	-	-	<i>Respondent.</i>

House of Lords, *4th February 1765.*

RATIFICATION—REDUCTION—FACILITY—MARRIAGE CONTRACT—FATHER'S POWERS—PROVISIONS TO CHILDREN—SECOND MARRIAGE.—A father, in his son's contract of marriage, conveyed his estate to his son and his intended wife in liferent, and the heir male of that marriage in fee. The son thereafter executed an entail of the estate to George, his eldest son, and heir male of the marriage, and a series of other heirs substitutes, reserving power to burden and alter. After his wife's death, he married a second time, and provided in the marriage settlement for the issue of the second marriage out of separate estate. He thereafter executed additional provisions in favour of the children of the second marriage, and burdened also the estate conveyed to the heir male of the first marriage, as well as granted a lease of the same for 40 years. The heir male of the first marriage was facile, and had been prevailed on to ratify the entail, and these subsequent deeds of provision. Held, that his son was not barred by his father's deeds of ratification from challenging the entail and provisions

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charged on the estate in favour of the second marriage; these ratifications having been obtained from a weak and facile person.

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JAMES DALLAS, eldest son of George Dallas of Ferrytoun, married Elizabeth Riddle; and on that occasion an antenuptial contract of marriage was entered into, (1683,) to which his father (George) became a party, and by which his father conveyed his estate of Ferrytoun to him and Elizabeth Riddle in liferent, for her liferent use allenary, and to the heirs male of the marriage in fee.

1694. The estate of Ferrytoun thus conveyed was thereafter sold; and, with the price, the estate of North Newton was purchased, and the rights taken in precisely similar terms. Upon this conveyance charter was obtained under the great seal, and they were infeft. Thereafter George Dallas of Ferrytoun, his father, died, and James, his son, succeeded.

James's wife died in 1702, leaving issue of this marriage three sons and five daughters.

1703. He married a second time, and in his marriage settlement became bound to infeft his second wife in liferent, and the heirs and bairns to be procreated between them,—whom failing, his own heirs whatsoever,—in a house in High Street, Edinburgh, as well as an annuity.

Of this second marriage there were thirteen children.

1733. James Dallas then executed an entail of the lands purchased by himself in favour of George Dallas, the eldest son of his *first* marriage, and a series of heirs, reserving power to alter. A family jewel, worth £500, was also conveyed to

1739. him at same time. He afterwards made additional provisions to the children of the second marriage, and burdened the estate therewith, and also conveyed the family jewel to the appellant, and granted a lease of the house and garden, and three acres of land of North Newton, to endure for 40 years, for £25 of yearly rent.

1741. After James Dallas' death, it being represented to his eldest son, George Dallas, that the debts of the deceased exhausted the value of the estate, they, taking advantage of his facility and weakness, prevailed on him to grant a deed of agreement, whereby they made him to “ratify, approve, “and confirm the foresaid writs, particularly above mentioned, with whole heads, clauses, articles, and conditions “thereof, and become bound never to quarrel or impugn the “same.” He was also made to execute another deed, confirming the same, and agreeing to accept an annuity. Under

this agreement George Dallas continued to receive his annuity until his death. On this event, his son, the respondent, brought an action of reduction, to set aside the above deeds of agreement and ratification, and also the deed of entail as in contravention of the marriage articles. This action was referred to arbiters, who declared the entail void and null. But parties not acquiescing, mutual actions were brought; and that by the appellant was conjoined with the reduction brought by the respondent, to set aside the deeds of agreement and ratification executed by his father, on the head of facility; and the deed of entail as *ultra vires* of him, and in fraud of the marriage settlement.

The appellant, in bar of the respondent's action for setting aside the deeds executed by James Dallas in favour of the children of the *second* marriage, pleaded the deeds of ratification granted by George Dallas, as well as homologation. The respondent maintained that the deeds of ratification executed by his father were no bar to the reduction; because these deeds of ratification were themselves reducible, and here sought to be reduced, on these grounds, 1st, That his father was of weak mind, facile, and easily imposed on—that this was proved by James Dallas's entail, which sets forth that incapacity as an inducing cause for the deed. 2d, That those deeds of ratification were greatly to his prejudice, for he was made not only to ratify that entail, but also the additional provisions to the children of the second marriage, of £500 to the appellant, William, as well as the conveyance of the family jewel to him; and, therefore, these deeds were obtained by fraud and circumvention.

After a proof of the state of George Dallas' mind at the time he executed the deed of ratification, the Lord Ordinary, upon considering it, "found George Dallas' imbecility July 8, 1761.
 "is not proved, and William Dallas, upon his interest, was
 "entitled to be preferred." But the Lords, on reclaiming petition, found "that the pursuer, by the acts and deeds Jan. 12, 1763
 "of ratification done and executed by his father, is not
 "barred from challenging the deeds founded on by the
 "defender, (appellant,) and executed by the pursuer's
 "grandfather; and remit to the Lord Ordinary to proceed
 "accordingly; and also to proceed further in the case as
 "he shall see just." And, on another reclaiming petition, Mar. 11, —
 the Court adhered.

Against this interlocutor the present appeal was brought to the House of Lords.

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Pleaded for the Appellant:—1st, That James Dallas had power, notwithstanding the marriage settlement, which conveyed the estate to the heir male of the marriage in fee, afterwards to convey the said estate to the said heir male, and a series of other heirs substitutes, under the limitations of a strict entail, and also to execute the other subsequent deeds of distribution, these being within the power of disposal of the father, and were besides rational and reasonable in the circumstances, and neither unequal, unjust, nor incompetent, though in favour of the children of the second marriage; 2d, Moreover, when old George Dallas died, it was found that his estate was greatly encumbered, and to such an extent as to make it difficult for his son James to interfere without the consent of all interested therein. Accordingly, the deeds of agreement and ratification were entered into, in the most open and fair manner, and with the sole object of benefiting the estate, His eldest son George, at that time, was perfectly sound in mind, and the whole transaction itself was the most rational in the circumstances of the deceased's affairs. His capacity is established by those who knew him best—by those who knew him from infancy; and their evidence is only contradicted by those who had not the same opportunities of knowing him, and who gave their opinion, without stating any reason for that opinion.

Pleaded for the Respondent:—1st, James Dallas having purchased the lands of North Newton, with the price of the lands of Ferrytoun, which were settled upon the heir male of his first marriage in fee, it was not in his power afterwards to convey it under the strict limitations of an entail, and to burden it with provisions to the children of his second marriage.

2d, It is satisfactorily made out by the proof, that George Dallas, at the time of executing the two deeds, was a “weak man.” One witness says, he was “crack-brained:” another, “a very weak man,” and this evidence is further corroborated by other evidence equally strong. It was corroborated by the father's deed of entail itself, which set forth his son George's incapacity. Besides this, he was in a most miserable starving condition, and undue advantage was taken of his distress, as well as weakness, to make him sign these deeds, by which an estate was conveyed away from him worth £100 per annum, without the least consideration.

After hearing counsel, it was

Ordered and adjudged, that the interlocutors complained of, be affirmed.

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For Appellant, *Al. Wedderburn, C. Yorke.*

For Respondent, *Al. Forrester, W. Johnstone.*

M'LEAN
v.
M'LEAN, &c.

Note.—Unreported in the Court of Session.

JOHN M'LEAN of Lochbuy, - - - *Appellant* ;
MARY M'LEAN and Husband, - - - *Respondents.*

House of Lords, 8th Feb. 1765.

CONDITIONAL BOND—APPARENT HEIR—A bond was granted by a grandfather to his granddaughter, under the condition that it was not to be alterable, except in the event of her marrying without his consent, or the consent of parties named. She married, after her grandfather's death, without the requisite consent. Held the bond still good, and binding on the heir taking his estate, though the grandfather only possessed on apparenacy.

A bond of provision was executed in favour of the respondent Mary M'Lean, by her grandfather, in the following terms:—" For the love, favour, and affection, which I have
" for my granddaughter, I bind and oblige *myself, my heirs,*
" (succeeding to the estate), under the provisions and de-
" claration after mentioned, to make good payment to the
" said Mary M'Lean, my granddaughter, of the sum of 7000
" merks, in name of additional portion and provision, at the
" first term of Martinmas after his death."—The provision and declaration referred to was,—“ That the same shall be
" unalterable and irrevocable, except in the event that my
" granddaughter shall marry without my consent if in life,
" and failing of me by decease, without consent of two of
" her nearest friends, for the time, on the father's side, or
" without consent of Alexander M'Dougall, her uncle by the
" mother, and failing of him by decease, without consent of
" two of her nearest friends, for the time, on the mother's
" side.”

After the granter's death, his granddaughter eloped with the other respondent, Allan M'Lean, to whom she was married, without consent of the relations named.

She thereafter, with consent of her husband, raised action for payment of the bond of provision. In defence, it was