

1748. *June 23.* Sir WILLIAM DALRYMPLE *against* Dame SIDNEY SINCLAIR.

SIR JOHN DALRYMPLE settled upon his second wife 30,000 merks of jointure, and left to her other heritable and moveable subjects for the provision of her children, and likewise disposed to them the lands of Ladyside and Garvell. The son, Sir William, insisted in a reduction of this disposition, in regard these lands were part of the estate settled upon him as heir of the first marriage, in his father's and mother's contract, which could not be defeated by a gratuitous deed; and the provisions to the younger children of the second marriage were not rational, as the subjects extended to above L. 2600, which, with 30,000 merks, amounted to above L. 4300 Sterling. The circumstances chiefly insisted on for proving the irrationality were, *1mo*, That in Sir John's first contract of marriage with an heiress, actually conveying her estate to him, 40,000 merks was thought a sufficient sum to burden the estate with in favour of younger children; *2do*, Sir John in fact only gave 22,000 merks to the three younger children; *3tio*, In his second contract of marriage, the sum of 60,000 merks only was provided to the children. From all which it was inferred, that in every party's apprehension, the provisions to these children, which, independent of the lands disposed, amounted to L. 4300, were more than sufficient. THE LORDS found, that Sir John could do no exorbitant or irrational deed to burden the pursuer, the heir of the marriage; and in regard of the circumstances of the case, and that it is admitted that there remained of free subjects belonging to Sir John at his death, the sum of L. 4302 Sterling, as a fund for provisions to the children of the second marriage, found, that the disposition of the lands of Ladyside and Garvell was not rational, and reduced the same.

*Fol. Dic. v. 4. p. 182.*

\* \* \* Kilkerran reports this case :

THAT a father may, notwithstanding his estate be provided by his contract of marriage with his first wife, grant rational provisions to the children of a second marriage, is certain; but how to estimate whether such provisions be to any extent rational, or irrational, can, in the nature of the thing, admit of no fixed rule; only some hints may be of use, such as, that it is not enough to induce a judge to pronounce a provision irrational, that it be such as he may think above what he would have made himself; for that to reduce the deed of the father, to whose judgment of provisions to his children a deference is *in dubio* to be paid, requires an apparent exorbitancy.

And no such exorbitancy appearing to many of the Lords in this case, where Sir John Dalrymple having seven children of his second marriage, had given a land estate, in addition to the provision made for them in his second contract of marriage, they were, upon this general consideration of the deference due to

No 145.  
How to estimate whether provisions are rational.

**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