

1738. December 16. CAMPBELLS *against* CAMPBELLS.

No 2.

A party delegated to third parties the power of making provisions on his children. This found competent.

COLONEL CAMPBELL being bound in his contract of marriage to secure the sum of 40,000 merks, and the conquest during the marriage, to himself and spouse in conjunct-fee and liferent, and to the children to be procreated of the marriage in fee, did, by a death-bed deed, settle all upon his eldest son, burdened with certain provisions to his younger children, to take place in case their mother should give up her claim to the liferent of the conquest, and restrict herself to a lesser jointure, otherwise these provisions to be void; in which event it was left upon the Duke of Argyle and the Earl of Islay to name such provisions to the children as they should see convenient. It being *objected* by the younger children upon the mother's refusal to restrict herself, That their father could not delegate his powers, and that such delegation was ineffectual, there being no compulsitor upon the referees to determine; which brings the matter to the same as if the children were left entirely unprovided; and concluding from this, that the settlement should be voided *in toto*, and that each child should have an equal proportion as if no settlement had been made;—THE LORDS found the power and faculty given to the Duke of Argyle and Earl of Islay is lawful, and does subsist; and in respect these referees have neither exercised their power, nor declared their will not to exercise the same, they superseded further proceeding in the cause till the 5th of June next, that in the mean time either party might make proper application to the Duke of Argyle and Earl of Islay, to determine what sums should be paid to the younger children, or declare their non-acceptance of the power committed to them. *See* APPENDIX.

*Eol. Dic. v. 1. p. 289.*

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S E C T. II.

Import of Clauses containing Reserved Faculties.

1676. June 7. RELICT of DR YEOMAN *against* His HEIR.

No 3.

A power to burden an heir with legacies to pious uses, or with an

DR YEOMAN, by his contract of marriage, provides ' L. 10,000 in conjunct fee ' to his future spouse, and to the heirs of the marriage, and L. 20,000 further ' to the heirs of the marriage, reserving his own liferent, and a power to burden his heir with legacies to pious uses, or with an additional jointure to his