No 125. it was provided to the heir-male; and the rather, that he himself was not *ab ante* fiar, but had the estate settled upon him by the same deed. And as to the narrative of the disposition, with respect to his undutiful behaviour, it was *alleged*, That neither that simple assertion, nor any thing that appeared in process, could be deemed a legal proof.

It was *answered*, That the father was fiar of the estate, and could have disposed of it for onerous, necessary, or reasonable causes; that he had done nothing *contra fidem tabularum nuptialium*, having sufficiently implemented the contract, by giving the estate to one of the sons of the marriage, though he neglected the eldest, upon very just grounds, which were not only instructed by the narrative of the disposition, but from attestations of his uncles and nearest relations, giving the same account of his conduct.

The Lord Newhall Ordinary found, "That in this circumstantiate case, the father might dispose of the estate to any of the sons of the same marriage." And the LORDS "adhered."

Act. *Ja. Graham*, sen. Alt. *Jo. Horn.*

Edgar, *p.* 100.

No 126. 1728. *January* 9. DOWIE *against* DOWIE.

IN a provision of sums, lands, and conquest, to children, in a contract of marriage, the LORDS found, That the father had a power of making an unequal division of the sums, lands, and conquest among the children of the marriage, but that he could not totally exclude any of them, without a cause, from a share thereof.

Fol. Dic. v. 2. *p.* 289. *Rem. Dec.*

*** This case is engrossed in a case Henderson against Henderson, 1728 February, No 33. p. 8199. *voce* LEGITIM.

No 127. 1738. *December* 16. CAMPBELLS *against* CAMPBELLS.

COLONEL CAMPBELL being bound in his contract of marriage to secure the sum of 40,000 merks, and also 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 purchase the estate of Burnbank during the marriage, taking the rights thereof to himself, his heirs and assignees, and, upon death-bed, did execute a deed, settling both the heritable and moveable estate upon his eldest son, with the burden of certain provisions in favour of the younger

children. In a reduction of this settlement, at the instance of the younger children, it was *pleaded* for them, That they were creditors *per capita*, each entitled to an equal share; and, supposing the father to have a power of division, it was irrational to leave the whole to one, burdened with small provisions in favour of the rest. It was *pleaded* in behalf of the defender, That an obligation granted *familiæ*, makes the family, as a body politic, creditor, so as to restrain alienations *extra familiam*, but does not make each a creditor *per capita*, to restrain the father from giving the whole to any one he pleases. The LORDS found, That each of the children was entitled to a share in the special sum and conquest, but that the father had a power of division of the sum and conquest among his children in such manner as might be found rational, and therefore that he might lawfully acquire a land estate, and take the rights thereof to his eldest son, and might also dispone his moveable estate to him, with the burden of rational provisions to his younger children. See APPENDIX. No 127.

Fol. Dic. v. 2. *p.* 289.

1743. *February* 4. SANDILANDS *against* SANDILANDS. No 128.

JOHN SANDILANDS, by contract of marriage, bound himself, 1*mo*, To take security for 18,000 merks to himself and wife in conjunct-fee and liferent, and to the children of the marriage in fee; whom failing, to his heirs, &c.; 2*do*, To secure the estate of Counteswells, a male-fee, holding of the town of Aberdeen, to the heir-male of the marriage; 3*tio*, That if there should be no sons of the marriage, and in life, the father should pay to one daughter of the marriage, for her provision and patrimony, 8000 merks at her marriage, or age of sixteen, and if two daughters, 10,000 merks, &c. The contract is dated in December 1721. In November 1722, Sandilands executed a bond in favour of a daughter, then procreated of the marriage, for 12,000 merks, one half payable at his own, and the other at his wife's death; providing, 1*mo*, That if they had other issue of the marriage, the sum be restricted to 6000 merks; 2*do*, That what sums she should take as heir of line, or executor to her father, should impute in payment of said provision, and she should only claim the surplus from the heir-male. Sandilands died in 1724, leaving a son, who was served heir to him, and infeft in the lands of Counteswells, upon a precept of *clare constat*, as nearest heir-male, and who died in 1737. The daughter pursued John Sandilands's heir-male, who was served heir-male to her brother for the above provisions. THE LORDS found, That, by the contract of marriage, she was entitled to a share of 18,000 merks provided by that contract to the issue of the marriage; and found, That the condition on which the sum of 8000 merks is provided to the only daughter of the marriage, viz. in case there are no sons procreated and in life, has not existed, in regard that, at the dissolution of the