

Court repelled the reason of reduction, and assoilzied the defenders. And what chiefly moved the Judges, was the insolvency of the heir of the marriage. For though, according to the strict interpretation of common law, he was entitled to the fee, yet, in a contract of marriage, intended for the benefit of those who should spring from the marriage, it could never be the intention of the contractors to secure the estate to creditors, in case of the heir's bankruptcy, and thereby to rob all their descendants. The case was put, of the heir being forfeited for treason; and it was agreed by all the Judges, that he could be removed from the succession. There is *par ratio* in the present case.—See *Principles of Equity*, Edit. 3. vol. 1. p. 263.

No 135.

*Fol. Dic. v. 4. p. 179. Sel. Dec. No 187. p. 251.*

1766. January 4.

MICHAEL RIDDEL *against* ROBERT RIDDEL of Glenriddel.

WALTER RIDDEL, in his contract of marriage, 1694, became bound to secure his whole land estate to the heir-male of the marriage. In the year 1727, purposing to fulfil that obligation, he disposed to his eldest son, Robert, the lands therein specified, burdened with his debts, reserving only to himself an annuity of 2000 merks. The lands of Stewarton, which came under the obligation, were left out of the disposition 1727. But that they were omitted by the oversight of the writer, without intention, was made evident from the following circumstances; *1mo*, That the title-deeds of that farm were delivered to the son, along with the other title-deeds of the estate; *2do*, That he entered into possession of the whole; *3tio*, That a subsequent deed by the father, *anno* 1733, relative to the former, proceeds upon this narrative, 'That the whole lands belonging to him were conveyed to his son, by the disposition 1727.' Many years after, the father having discovered that Stewarton was not comprehended in the said disposition, ventured to convey them to his second son, who was already competently provided. In this case, it was not pretended that Stewarton was actually conveyed to the son, which could not be without a formal disposition. But as there was sufficient evidence of the agreement to convey these lands as part of the estate, which the father remained still bound to fulfil, the Court judged this a sufficient foundation to void the gratuitous disposition to the second son.

No 1

A gratuitous deed in favour of a second son, found ineffectual against a prior obligation in a contract of marriage in favour of the heir-male.

*Sel. Dec. No 237. p. 311.*