

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