

grandchildren, as no principle can be conceived, which would lead a father to provide for his son, and yet leave his grandchildren destitute; and this difference the case of childrens' claims for their fathers' provisions, from all the other cases resorted to by the defender, L. 102. D. De Cond. Demonstrat; Magistrates of Montrose against Robertson, 21st November 1738, No 50. p. 6398.

" THE LORDS altered the Lord Ordinary's interlocutor, and found the defender liable.

For Helen, *Henry Dundas.* For James, *Archibald Cockburn.* Clerk, —.
A. E. Fol. Dic. v. 4. p. 185. Fac. Col. No 51. p. 90.

1769. March 10. RUSSEL against RUSSEL.

A FATHER having granted a bond of provision, in favour of a second son, his heirs, executors, and assignees, payable at the first term after the death of the granter, the grantee predeceased his father. In an action, at the instance of a sister of the grantee, for payment of the bond, it was *pleaded*, That in donations *mortis causa*, the general rule, *quod morte donatarii perit donatio*, may be set aside by a clear indication of a different intention in the donor, which occurs strongly here. *Answered*, Bonds of provision to children are granted in implementation of the natural obligation; and as soon as that ceases, by the death of the child, the provision falls. The adjection of heirs and assignees, which is customary in all bonds of provision, is not sufficient to entitle the extraneous heir of children, after the death of a father, to claim bonds, which, upon their predecease, he had omitted to cancel. THE LORDS found the bond not due.

Fol. Dic. v. 4. p. 186. Fac. Col.

*** This case is No 36. p. 6372. voce IMPLIED CONDITION.

S E C T. XX.

Conditional, and Implied, Provisions to Children.

1672. June 21.

ANNA CARSTAIRS and JOHN RAMSAY, her Husband, against JOHN CERSTAIRS, her Father, and SIR JOHN, his Tutor dative.

JOHN CARSTAIRS, the father, being obliged by contract of marriage, *in anno* 1649, in case there should be but one daughter procreated of the marriage betwixt him and Isobel Ainsly, to pay to her the sum of L. 20000 after her at-

No 155.

No 156.

No 157.
Provisions in favour of daughters, failing heirs-male of the

No 157.
marriage, are
not due till
the marriage
be dissolved
by death of
the husband
or wife, al-
though pay-
able at a cer-
tain age.

taining the age of 16 years, the said Anna did intent action against her father and his Tutor-dative, for payment of the said sum, she being now past the age of 20 years, and married. It was *alleged* for the defenders, That the contract of marriage could furnish no such action, because the provision in favours of one daughter, was only in case of failure of heirs-male of the marriage, which condition did not yet exist, seeing both the father and mother were alive, and might have heirs-male. It was *replied*, That the father being furious, and a Tutor-dative given to him, and the mother not having cohabited with him these many years, and being past 50 years of age, by reason whereof it was impossible there should be any heirs-male of the marriage, the condition of failing of heirs was purified, and the condition ought to be satisfied.

THE LORDS did sustain the defences, notwithstanding of the reply, and found that such conditional provisions in contracts of marriage in favours of daughters, failing of heirs-male, could only be interpreted where the marriage is dissolved by the death of one of the parties contractors, at least; and some were of opinion, that the condition could not be fulfilled but by the death of the husband, to whom only an heir of the marriage could be served. But as to this case, they did all agree, where both parties were alive, that it could never be the meaning of the parties that the father should be distressed, because of age or sickness, as equivalent to the dissolution of the marriage by death, which is not the meaning of the clauses.

Gosford, MS. No 493. p. 258.

* * See Stair's and Dirleton's report of this case, No 43. p. 2992, *voce* CONDITION.

1775. July 27. HELEN MEARNs *against* AGNES and MARY MEARNs.

No 158.
Liberal con-
struction of
an inaccurate-
ly worded fa-
mily-settle-
ment, execut-
ed by a fa-
ther, in a
question a-
mong his
children.

IN 1723, the deceased Alexander Mearns, father to the pursuer and defend-
ers, executed a disposition as follows: ' Know all men by these presents, me
' Alexander Mearns, merchant in the Abbay-hill, for the love and favour I
' have and bear to Mary Lawrie, my well-beloved spouse, and in respect there
' being no contract betwixt us, or provision for her after our marriage, and it
' hath pleased the Lord to bless us with four children; therefore, wit ye me,
' for an liferent and provision to the said Mary Lawrie and my four children,
' (she being obliged to educate and alimnt them after my decease, in case I
' shall happen to decease before her) to have disponed and assigned, likeas I
' hereby dispone and assign, in favour of the said Mary Lawrie, my well-be-
' loved spouse, with and under the provisions and conditions under-written, all
' and hail an tenement of land built by me upon an piece of waste ground,
' lying in the Abbay-hill; &c.
' By the same deed, Alexander Mearns nominated his wife to be his sole executrix
and legatrix; but, after assigning to her his houseshold plenishing, and all debts