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which conveyed the estate to her as his only daughter, was set aside. When, therefore, she is deprived from taking the entire benefit, equity will support her father's settlement so far as to hold it as an exercise of the power conferred on him by the entail to the extent of a reasonable provision. Looking therefore to the value of the estate—to the intention of the testator to bestow the whole upon her—the manner in which his intention was disappointed—the provision allowed by the Court is reasonable in the whole circumstances.

After hearing counsel, it was

Ordered and adjudged, that the appeals be dismissed, and that the last mentioned interlocutor of 25th February 1756, and also so much of the said first mentioned interlocutor of the 19th November 1755 as is not thereby varied, be affirmed.

For Appellants, *C. Yorke, Walter Stewart.*

For Respondent, *Robert Dundas, Al. Forrester.*

Note.—Unreported in the Court of Session.

THE RIGHT HONOURABLE LORD GRAY	}	<i>Appellants.</i>
and LADY GRAY, - - -		
MAGISTRATES and TOWN COUNCIL OF	}	<i>Respondents.</i>
PERTH, - - - - -		

House of Lords, 30th March 1757.

SALMON-FISHING—GRANT—DRAWING NETS ON BANK.—A prior grant to a party of the salmon-fishing in and round an island on a river, without any limitation as to drawing the nets, does not prevent the Crown from making a posterior grant to another party whose lands are opposite to the island; and where the channel is so narrow as not to permit both

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fishing without encroaching on each other, the parties have an alternate right of fishing.

THE appellants held their lands situated on the banks of the Tay “*cum piscariis salmonum aliorumque piscium in aqua de Tay,*” and under this right and holding, alleged that they and their ancestors had been immemorially in possession of the whole fishings on the *north side* of the Tay, within the limits of their lands; and being desirous of improving their fishing, they cleared the channel of the river in those places where the stones obstructed the drawing of their nets, in particular between their two fishing stations called Hempdome and Cruikhead—one of which was above, the other below, the Island of Sleepless, belonging to the respondents.

The respondents had a prior grant from the Crown of the Island of Sleepless, with the salmon-fishing around it, and when the appellants proceeded to erect a fishing station, called the Pye Road, on their own side, and between Hempdome and Cruikhead, and directly opposite to the Island of Sleepless, the respondents objected, stating that this fishing station was an encroachment on their right of fishing, and raised the present declarator, setting forth that they had, both by title and by immemorial possession, right to the whole fishings around and upon every part of the Island of Sleepless, and concluding to have it found that the fishings upon the lead and channel of the river, interjected betwixt the said Island and the opposite north bank of the said Tay, was their exclusive property. They further stated, that the channel of the river between the said island and the opposite shore, where this new station was erected, was so narrow as to prevent both fishing

without encroachment on the other. That where a salmon-fishing is granted by the Crown upon a part of a river, without limiting the granter to the particular part where his nets are to be drawn, the whole salmon-fishing is granted. The grantee may draw his nets on both sides of the river; and this right had been confirmed by immemorial possession, as confirmatory of their grant from the Crown, which grant was anterior to that of the appellant. In defence, it was stated that the respondents' grant of the Island of Sleepless, with the salmon-fishing around it, could not carry anything more than a grant of lands on one side of a river, with the fishing on that side, which certainly imports no more, than the right of fishing in the river, and drawing the nets on the side where the lands lye, but *not* the privilege of drawing the nets on the opposite side; and that a grant of the Island of Sleepless, with the salmon-fishing round that island, does not so divest the Crown as to prevent it from giving a posterior grant of fishing on the opposite side.

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The Court, of this date, found, “ that the town of Perth, pursuers, have the only exclusive right of fishing upon the lead and channel of the river interjected betwixt the Island of Sleepless and opposite north bank of the said river, and the defenders (appellants) have no right to fish in that part of the river, and decern and declare accordingly.” A reclaiming petition was presented praying a proof. A proof was allowed and led, from which it appeared, that the fishing at the Pye Road station might be exercised without interfering with the fishing belonging to the town of Perth, at and around the Island of Sleepless. After hearing parties on the import of the proof, the Court adhered.

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10th Jan.
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Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellants :—That the grant of salmon fishing around an island does not give right of fishing or drawing nets on the opposite shore. Such a grant cannot carry more than the lands on one side of river, with a right of fishing on that side, and does not import such a right of fishing as entitles the respondents to draw their nets on the opposite side; although no limitation is expressed as to the place where these nets are to be drawn. Nor does such grant so entirely divest the Crown, as to prevent it from conferring a posterior right of fishing on the opposite side; and consequently that the Crown may, notwithstanding such grant, establish a fishing on the banks of the river opposite to the former fishing, and so the first grant cannot carry an exclusive right of fishing on both sides of the river. The respondents' grant was limited to fishing in the channel next or adjacent to the Island of Sleepless, and drawing their nets thereon; and therefore being so expressly limited, they could not prescribe a right beyond those limits. That by the proof adduced, it was clear that the fishing at Pye Road station can be carried on without interfering with the respondents' right of fishing, and the practice was in such narrow channels to fish alternately, which was the practice in eleven different fishings on the Tay, where the heritors on the different sides fish in this manner.

Pleaded for the Respondents:—That by the respondents' charter, the town of Perth acquired right to the salmon fishing in the river Tay, close to and around the Island of Sleepless on all sides; and the Crown having granted this full and ample right,

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could not thereafter confer on the appellants the salmon fishings adjacent to the Island of Sleepless, because where a salmon fishing is granted by the Crown upon a river, without limiting it to a particular part, where his nets are to be drawn, the whole salmon fishing is granted, and the grantee may draw his nets on both sides of the river. The respondents have had immemorial possession conform to this extent and measure of their right, without dispute, and have therefore acquired a prescriptive title.

After hearing counsel, it was

Ordered and adjudged, that the interlocutors complained of in the said appeal be, and the same are hereby reversed; and it is hereby declared, that the appellants are entitled to an alternate right of fishing upon that part of the river in question, and it is therefore ordered that their defence be sustained, and that they be assoilzied.

For Appellants, *C. Yorke, Al. Wedderburn.*

For Respondents, *R. Dundas, Al. Forrester, Fred. Campbell.*

Note.—Unreported in the Court of Session.

[M. 10956.]

<p>Mrs MARY MONYPENNY, widow of John Ayton younger, and MARY and JEAN their daughters; and JAMES AYTON (formerly Monypenny) -</p>	}	<i>Appellants.</i>
<p>THOMAS AYTON, second son to John Ayton the elder, and brother to John Ayton the younger, -</p>	}	<i>Respondent.</i>