

1775. *November 22.* ABRAHAM ROWAN *against* ROBERT ALEXANDER.

IN 1763, James Rowan, (who had acquired right by purchase to the lands of Dusland, some houses in Paisley, and Maxwelltown, and to an heritable debt or wadset-right, over the lands of West Shield, and a salmon-fishing in the river Clyde, with their pertinents, for the sum of L. 472, and besides these heritable subjects, had also a considerable moveable estate,) executed a general disposition of his estate, real and personal, in favour of Bessey Rowan, his wife, and his nephews Robert and James Rowan, sons of his younger brother, Hugh Rowan, which disposition contains a clause, secluding and debarring all others his nearest of kin and relations; and, at the same time, reserving full power to himself, at any time in his life, and even on death-bed, to revoke or alter, in whole or in part, and to dispose of the premisses as he should think fit; dispensing with the delivery, and declaring the said disposition, though lying by him at his death, to be equally good as if it had been formally delivered.

In 1768, James Rowan executed another disposition, which proceeds on the recital of the love, favour, and affection he bore to his nephew Robert Alexander, as well as to Bessey Rowan his spouse, and other good and weighty causes and considerations him thereto moving, therefore, he gives, grants, and disposes from himself, his heirs and successors whomsoever, heritably and irredeemably, to and in favour of Bessey Rowan, his wife, and Robert Alexander his nephew, all and hail the lands of West Shield, (meaning the heritable incumbrance on West Shield,) one third to Bessey Rowan, and two thirds to Robert Alexander; which said two thirds he burdens with payment of various legacies to his friends, reserving to himself a power to alter, and dispensing with the delivery. James Rowan died a day or two after making it; he was buried on 14th July 1768, and the following ratification was made after his burial: 'At Paisley, the 14th day of July 1768 years, We Robert and James Rowans, nephews and heirs of the within designed James Rowan, do hereby approve of the within disposition, in the hail clauses and heads thereof. In witness whereof, we have subscribed these presents, place and date foresaid, &c.'

Upon the death of the said James Rowan, his relict and nephews, Robert and James Rowans, and Robert Alexander, settled all matters concerning the succession; and, as it became necessary to gather in the effects, they demanded payment of the heritable debt from John Paterson of West Shield, who raised objections; in-particular, that the disposition 1768, conveying this debt in their favour, was executed on deathbed, and therefore reducible; and, as the former deed had been taken away by the last one, the succession had thereby fallen to the heir of conquest, viz. William, the elder brother of James Rowan, and his family. His objections, however, were over-ruled, and decree passed against him, and the disponees were obliged to bring an adjudication of his lands.

No 32.

A general settlement of one's estate, dispensing with the delivery, and containing power to revoke, not held to be annulled by a posterior partial settlement in favour of others executed on deathbed, which contained no direct revocation of the former; nor the second, reducible, as on deathbed, in a question betwixt the heir at law, and the disponees in both deeds.

No 32.

Mr Paterson having afterwards got a power of attorney from Abraham, the third son of William, and having served him heir of conquest, he brought the present action in his name against the disponees, calling for the several deeds, in order to their being reduced and set aside; and to have it found, that the pursuer, as heir of conquest of his said uncle, had the only good and undoubted right to his heritable estate.

The Lord Ordinary, by one interlocutor, found, "That the first deed of settlement, in the 1763, which is general of the whole estate, heritable and moveable, belonging to the defunct, in favour of Bessy Rowan his wife, and of Robert and James Rowans his nephews, equally betwixt them, containing a power of revocation, is a valid and effectual deed, so far as not revoked: Finds the disposition executed by the said deceased James Rowan, in favour of the said Bessey Rowan his spouse and Robert Alexander his nephew, of his lands of West Shield, in the proportion of one third of them to her, and two thirds to Robert Alexander, whom he burdens with a variety of donations to the persons therein mentioned, and bears date in the 1768, as it contains no clause of revocation, general or special, does not therefore hurt, in any respect, the settlement 1763, except in so far as the two deeds are incompatible: Finds, so far as concerns Bessey Rowan, no alteration is made; but, so far as concerns the two-thirds of the lands disposed to Robert Alexander, this being incompatible with the former settlement, of necessity implies a revocation; and as this last deed is admitted to have been executed on deathbed, sustains the reasons of reduction so far as concerns the two thirds of West Shield; but repels the reasons of reduction as to all the other subjects." And, by a subsequent one, "having also considered that the disposition 1763 is revocable, and the deed 1768, which conveys to the representers, is a clear alteration of the former deed, and was executed on deathbed, adhered to the former interlocutor."

But the case having been brought before the Court by a reclaiming bill and answers; moved chiefly by the defender's plea that there was no express revocation in the latter deed,

"THE LORDS sustained the defence, and assoilzied the defenders."

Act. Rolland, *M^e Queen.*

Alt. *Ilay Campbel.*

Clerk, *Campbell.*

Fol. Dic. v. 4. p. 120. Fac. Col. No 200. p. 139.

No 33.

1776. December 11. MONTEATH *against* DOUGLAS of Douglas.

In a contract entered into between Mr and Mrs Monteath, on the one hand, and the Duchess of Douglas, and Mr Monteath younger, on the other, Mr Monteath bound himself to settle his whole estates on the younger; and on the other part, Monteath younger bound himself to pay all his father's debts, with an annuity to him of L. 100 during his life; and for payment and performance