

1806. *November 20.* ROBERTSON *against* The DUKE of ATHOLE.

THE Reverend James Robertson (18th December 1775) conveyed his whole property, and especially certain lands, to trustees for behoof of his children. With regard to these lands, the settlement proceeds in these words: "And for portion to the said James Robertson, my third lawful son, I hereby re-commend to and appoint" (his said trustees), "to dispone, transfer, alienate and make over in favour of the said James Robertson, my son, upon his arrival at the age of twenty-one years complete, and behaving well, and to the satisfaction of said trustees, and that in liferent, for his liferent use, and in fee to the heirs-male of his body; whom failing, in liferent to said Charles Robertson, (his fourth son,) and in fee to the heirs male of his body; whom also failing," to his fifth and sixth sons successively in liferent, and in fee to the heirs-male of their bodies; "whom all failing, to my own nearest lawful heirs and assignees whatsoever, All and hail the foresaid lands," &c.

The trustees (31st October 1785) disponded the lands exactly in terms of the above settlement.

James Robertson having sold the lands to the Duke of Athole, his power of doing so came to be questioned. This point was tried by the purchaser presenting a bill of suspension; and the case was reported to the Court on memorials.

It was held, that the substitution of the younger children did not alter the case, nor limit the power of disposal which the disponee would have had if there had been no such substitution; for it was thought to import nothing more than a simple destination;—and the disponee's right not being restricted by the use of the term, "for his liferent-use *allenary*," or words of the same import, to a fiduciary fee, any sale of the property made by him must of course be effectual.

The Court (20th November 1806) remitted to the Lord Ordinary to refuse the bill.

Lord Ordinary, *Armadale.*
Alt. *Forbes.*

For Charger, *Monypenny.*
Agent, *Ro. Graham, W. S.*

Agent, *W. Mackenzie, W. S.*
Clerk, *Scott.*

F.

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No. 2.

A father having disponded an estate to his third son, "in liferent, for his liferent use, and in fee to the heirs-male of his body," whom failing, to his fourth and fifth sons, and the heirs-male of their bodies respectively, in the same terms, the third son is not prevented from selling the estate by the subsequent destination.