

1683. *November.*STARK *against* BRUCE.

No 9.

FOUND that a bond payable to a woman, she being in life, and to her daughter, after her decease, made the daughter-substitute liable for the mother's debt *quoad valorem*, but not by any universal passive title, viz. after heir-general was discussed.

*Fol. Dic. v. 2. p. 345. Harcarse, (BONDS.) No 189. p. 42.*

1705. *December 13.*

GILBERT LIVINGTON and his Factor *against* Mrs MARGARET MENZIES and the Heirs of Line of SALTCOATS.

No 10.

Found, that a general re-tour, as heir of line, carried right to a provision in a contract of marriage, in favour of heirs male, both characters coinciding in the same person; and that it empowered him to evacuate the provision, by disposing to heirs whatsoever.

GEORGE LIVINGTON of Saltcoats, with consent of his curators, having, in the year 1655, by his contract of marriage with Mary Hepburn, daughter to the Laird of Beinstoun, obliged himself to tailzie his estate to himself, and the heirs male to be procreated betwixt them; which failing, to his nearest heirs male whatsoever; Alexander, his eldest son, disposed the lands to George the younger, and to his heirs and assignees whatsoever. Upon which disposition he was infeft, and entered by the superior; and granted a disposition or bond of tailzie in favour of Margaret Menzies, his sister-daughter. Gilbert Livington, as heir male to old George, pursued a reduction, improbation, and declarator against her, for removing the deeds to his prejudice, and for declaring and making effectual his right as heir male; upon this ground, that Alexander was a fatuous or furious person, incapable to dispoise to his brother; and the disposition by George to Margaret Menzies must not only fall in consequence, *quia resolutio jure dantis resolvitur jus accipientis*, but also should be reduced *ex capite lecti*.

*Alleged* for the defenders; That the substitution in George Livington's contract of marriage 1655, (who was then minor) in favour of heirs male whatsoever, failing heirs male of the marriage, was null and reducible; because, *imo*, A minor with consent of his curators cannot cut off the natural and lineal succession of a family by a tailzie, which is an act of the highest importance, exceeding the verge of curators' administration, and upon the matter, a donation from which minors ought to be restrained; *2do*, Though the contract was so far binding, that the obligation in favour of the heir male of the marriage, could be frustrated by no gratuitous deed; yet the substitution to other heirs male, in which the other party contracter was not concerned, is no *vinculum juris*, producing action, or a ground of inhibition, but a mere destination or a bond of tailzie for love and favour, revocable at the granter's pleasure. And as the substitution was no ground of action, so if any obligation