

No 19.
third party,
failing heirs-
male of the
disponee,
does not pre-
clude the dis-
ponee from
selling.

Græm's right was burdened with a power of redemption, expressed in the following terms: ' In case of the death of the said General David Græme, without heirs-male of his own body, the lands, baronies, &c. are and shall be redeemable by Mungo Græme, second lawful son of the said deceast James Græme of Braco, or the heirs-male of his body, from the person succeeding to the said General David Græme, or the heirs-male of his body, or from any other of the substitutes, &c. by payment to the person so in possession, of the sum of L. 6 Scots money, upon any term of Whitsunday or Martinmas, the said Mungo Græme, or his heirs-male, shall think fit.'

There was no prohibition to contract debt, or sell, or alter the course of succession, but Moncrief's Trustees brought a suspension, to have it tried whether the person in the right of redemption, on the death of General Græme without heirs of his body, would have any claim.

The clause of redemption had been inserted for this reason ;—Mungo Græme, in whose favour the power of redemption was given, was the immediate younger brother of the General; but, at the time of executing the deed, it was not known whether or not he had died abroad. The right was given to him, failing the heirs, to whom, had he been certainly alive, he would have been substituted.

The General, however, had an irredeemable right to the estate. The disposition in his favour contained no prohibition to sell or alter the succession, therefore his Trustees possessed the entire right of disposal of it. It was accordingly so found; so that the purchasers were in perfect safety to pay the price.

Ordinary, *Stonfield.*

For Stewart's Trustees, *A Tod*, W. S. Agent.

For Græme's Trustees, *H. Corrie*, W. S. Agent.

SECT. IV.

Mutual Substitution among Children, how far it implies Limitations.

1684. *January.* WILLIAMSON and LITTLEJOHN *against* LITTLEJOHN.

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A bond of
provision was
granted to
children, with

IN the count and reckoning at the instance of Patrick Williamson, and — Littlejohn his spouse, against Andrew Littlejohn tailzior, No 44. p. 3858., the pursuer having craved the defender might be countable for 3000 merks that

was due to the deceast Anna Littlejohn, another of the sisters, and left by her in legacy to the pursuer's wife; *alleged* for the defender, that the sums contained in the bond of provision being payable to the children at the age of 21 years, or the time of their marriage, which of them should first happen; and it being provided, that if any of the children decease before the age of 21 years, their portions shall accresce to the survivors equally amongst them; so that the said Anna having deceased unmarried, and before the age of 21 years, she could not do any deed, especially a gratuitous voluntary deed, in prejudice of the other children, as is clear by many decisions. *Answered*, That the said Anna being fiar of the sum, and the provision of the bond being only of the nature of a substitution, she might dispose of the sum as she pleased, either by testament or otherways, especially she being marriageable when she died.—THE LORDS found, that the deceased Anna Littlejohn could not dispose gratuitously of the bond, in respect of the condition and substitution therein; but sustained the right made by Anna to the pursuer, in so far as concerns her aliment, entertainment, expenses of sickness and funerals, and expenses of confirmation.

Fol. Dic. v. 1. p. 307. Sir P. Home, MS. v. 1. No 550.

* * * Harcarse reports the same case:

THOMAS LITTLEJOHN having granted a bond of provision to his three daughters, with this quality, that if any of them should die, the defunct's portion should accresce to the survivors; one of them dying, disponed her right to another of the surviving sisters. It was *alleged* for the third sister, That the defunct could not, by a gratuitous deed, disappoint the provisional right of accrescence.

Answered, That the survivors are in the case of heirs-substitute, and so cannot quarrel the defunct's deed.

Replied, The clause is not conceived by way of substitution, in the terms of *which failing*, &c. but by way of provision, which makes the surviving sisters creditors to the defunct.

THE LORDS found, that the defunct sister could not, by a gratuitous deed, disappoint the foresaid provision.

Harcarse, (BONDS.) No 193. p. 43.

1687. February. LADY NEWARK *against* COLLEAN, &c.

MY LORD NEWARK having made a bond of provision to his six daughters, payable at their respective ages of 15 years, and to the heirs of their bodies, and the proportion of such as should die without heirs of their body, to accresce to the surviving sisters; one of the sisters assigned her provision to their mother; and in a competition with the mother and the rest of the sisters, it was

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this quality, that if any of them should die, before marriage or majority, the defunct's portion should accresce to the survivors. One of them having died before marriage or majority, the Lords found, that she could not, by a gratuitous deed, disappoint the substitution.

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