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.

No 20. 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.

*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.*

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

No 21.

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

No 21. *alleged* for the sisters, That the substitution imported that the defunct could not gratuitously assign, seeing the provisions were small, and the father considered that they might be bettered by the hazard of the substitution.

*Answered*, The substitution in favour of the survivors being conceived by the clause *which failing*, and not by a separate clause, nor in favours of the heir of the family; which is the case of some practicks, as that of Riccarton, No 26. p. 4338. Craigs, &c.

THE LORDS sustained the gratuitous assignation.——This is not clear, it being a qualified fee, as to lucrative deeds.

*Fol. Dic. v.* 1. *p.* 307. *Harcarse*, (BONDS.) *No* 212. *p.* 48.

No 22. 1710. *December* 14. SMITH and WALLACE *against* SMITH.

A PARTY having granted bond to his younger children, as a competency for their better living, wherein he obliged himself to pay particular sums to each of them at the first term after his decease; 'and that the same should be in satis-'faction of all portion-natural, or what else they could claim by his death, and 'that the portion of any of them happening to die without heirs of their 'own body, should be divided equally among the survivors;' and one of the children having conveyed his provision to the heir, out of a grateful sense of good offices and services received from him, the LORDS found that he might dispose of his portion for causes reasonable, though not onerous, notwithstanding the substitution. *Fol. Dic. v.* 1. *p.* 307. *Fountainhall.*

*** *See* This case, No 50. p. 3512.

*** Forbes reports the same case:

THE deceased Mr John Smith disponed his land-estate to his eldest son William, and granted a bond of provision to his five younger children after-mentioned, as a competency for their better living, wherein he obliged himself, his heirs and executors, to pay to Patrick Smith L. 2000; to Beatrix 3000 merks, to Susanna L. 2000, and to John and Euphan 5000 merks equally betwixt them, &c.; and that at the first term of Whitsunday or Martinmas after the granter's decease, whenever the same should happen, with the ordinary annualrent from the term of payment; provided that the sums of money so paid, should be in full satisfaction of all portion-natural, or what else they, or either of them could ask or crave through the father's decease; and that, in case of any of these children's decease without lawful heirs of their own body, their portion should be divided equally among the rest surviving. John Smith died before his father, and Patrick died after him, but conveyed what was resting of his portion by testament in favour of his eldest brother William, for good offices received from him.