

No 32. simple destination, alterable at pleasure of any of the substitutes; for here the settlement being in favour of the man's own heirs, nothing further was understood to be intended than to establish a line of succession.

*Fol. Dic. v. 1. p. 308. Rem. Dec.*

\* \* \* See This case, No 3. p. 1262.

1738. November 21. ELIZABETH SINCLAIR *against* SINCLAIR.

No 33.

A CLAUSE of return, in a common bond of provision to a child, was found to import no more than a simple substitution.

*Kilkerran, (FIAR, ABSOLUTE AND LIMITED) No 2. p. 192.*

1740. June 11.

No 34.

NAPIER and ANNA JOHNSTON his Spouse *against* MARY JOHNSTON.

Clause of return, when effectual against alienation for an onerous cause; and when caution must be found to repeat.

ROBERT JOHNSTON of Kelton, having given a gratuitous additional bond of provision of 7000 merks to Anna Johnston his sister, payable at the first term of Whitsunday or Martinmas after expiration of year and day after his decease, but with this provision, 'That in case she should decease without any child or children lawfully procreated of her body, and existing at the time of her decease, in that case the said sum, with the annualrents resting at her death, should return and be payable to the said Robert Johnston and his heirs, representing him in his estate of Kelton;' and Anna having, in her contract of marriage with Alexander Napier, assigned the said bond; in an action at the instance of the said Anna and her husband, against the heir of Kelton for payment, the LORDS found, 'That the clause of return of the 7000 merks contained in the said additional bond of provision is effectual in case the condition expressed in the clause of return shall exist, notwithstanding the assignation by the said Anna in her contract of marriage; and that the pursuers, upon payment of the said sum, must find caution to repeat the same, in the event of the existence of the condition mentioned in the said clause of return.'

Though clauses of return, in children's bonds of provision, are understood to operate no further than to exclude gratuitous deeds in prejudice thereof, yet this case fell to be governed by another rule, viz. That conditions annexed to a gift are to have their full effect; and though it be also true, and has been often found, that where a sum affected with a clause of return is made payable at a day certain, the creditor is not bound to find caution to repeat, because of the presumed will of the granter, by making the sum payable at a day certain, yet, the case is different, where an assignee pursues, who may happen to be a bankrupt.

*Fol. Dic. v. 3. p. 217. Kilkerran, (FIAR, ABSOLUTE AND LIMITED) No 3. p. 192.*