

- No. 32. speciality either of Sir George Mackenzie's private opinion, or upon any particular clause in the nomination, but upon the general ground, that in institutions and substitutions by tailzies the nearest heir existing at the time of the devolution of the succession and service is by the presumed will of the defunct preferable, which they resolved to follow as a rule in time coming; but left the question entire, how far the remoter heir served might be obliged to denude in case of the after existence of a nearer heir of tailzie."

Dalrymple, No. 87. p. 113.

1714. February 19. SIMPSON *against* WALKER.

- No. 33. A sum being provided to a man and his wife, and the longest liver of them two in life-rent, and to the heirs to be procreated betwixt them two in fee; which failing, to the wife's heirs or assignees; and the husband and wife having deceased without children of the marriage, the sum was found to belong to the wife's heirs, and not to her executors.

Fol. Dic. v. 2. p. 401. Forbes MS.

* * This case is No. 45. p. 5475. *voce* HERITABLE AND MOVEABLE.

1714. December 14.
THE CHILDREN of BAILIE FIFE *against* KATHARINE STEVENSON and her HUSBAND.

No. 34.
A bond to the father in life-rent, and a child *nominatim* in fee, which failing, to the father, his heirs, executors, or assignees, found to be moveable.

Young of Winterfield granted a bond of 7,000 merks to Alexander Stevenson and his wife in life-rent, and to their daughter Susanna Stevenson in fee; and failing of the said Susanna by decease, to the said Alexander, his heirs, executors, or assignees, which is the precise conception of the bond.

Alexander Stevenson and his wife being dead, Bailie Fife, tutor to Susanna Stevenson, who was married to her father's sister, takes an heritable bond of corroboration in these terms: viz. "To the said Susanna, and the heirs of her body; which failing, to his own wife, and her two sisters *nominatim*, and the portion of the deceasing to accresce to the survivor.

Susanna Stevenson deceasing without issue, Margaret Stevenson, the only survivor of the three father's sisters, presuming that she had right to the bond, by the conception of the corroborative security, disposed the said sum in favours of Bailie Fife and his children of a second marriage, of no relation to the Stevensons, who do now claim right to the said sum by virtue of the said disposition to their father.

On the other hand, Katharine Stevenson being a creditor to Alexander Stevenson her brother, who was brother's son and heir to Alexander Stevenson, to whom the original bond was granted in life-rent, and also heir to Susanna the original