

S E C T. IV.

Clause giving the wife power of disposal.—Wife's heir first in the substitution.

No 34. 1676. *June 27.* EARL of DUMFERMLINE *against* EARL of CALLENDAR.

In a contract of marriage, the husband obliged himself to take the conquest to himself and wife in conjunct-fee and liferent, with an express power to the wife to dispone at her pleasure upon the half thereof. In this case the wife was found to be fiar of the half of the conquest; which was inferred not only from this power of disposal, but also because she had an opulent fortune of more value than her husband's.

Fol. Dic. v. i. p. 300.

. This case is reported by Stair, No 7. p. 294r.; by Dirleton, No 4. p. 4078.; and by Gosford, No 4. p. 4080.

No 35. 1720. *July.* THE CREDITORS of ELIOT NORTHSENTON *against* ELIOT of Borthwickbrae.

A WIFE HAVING made a disposition of lands *nomine dotis* to her and her husband in conjunct-fee, and to the heirs to be procreated betwixt them; which failing, to the wife's heirs of any other marriage; which failing, to the husband's heirs of any other marriage; which all failing, to the husband, his heirs and assignees whatsoever; it was *contended*, That here the wife was fiar, because the subject came from her, and her heirs were first called in the substitution.—THE LORDS found, notwithstanding, the husband to be fiar. *See APPENDIX.*

Fol. Dic. v. i. p. 300.

No 36. 1733. *June.* ANGUS *against* NINIAN.

A SUM assigned by a woman in her contract of marriage, in name of tocher, to herself and husband, and longest liver, in conjunct-fee and liferent, and the