

No 110. the burden thereof, whereby the daughter was preferable to all the deeds of the son. *2do*, That the brother is dead is instructed by the disposition, wherein the father reckons on no more children but three; especially considering, that the pursuer having offered to prove, by the defender's oath, that he was dead, the deponent acknowledged, 'that he suspected the worst.' Again, the portion of the deceasing children being provided, in the contract of marriage, to the survivors, the surviving children had right to draw the same without any title of succession. And though the former, by arriving at the age of sixteen, might seem *facere partes*; yet by their death, without uplifting the money, the latter's right revived as if the deceased children had never existed.

Duplied for the defender; The younger children's provision, that was moveable by the contract of marriage, became not heritable by the disposition, more than all the father's other debts wherewith he thought fit to burden his son; for, though the burden did undoubtedly make the son, and lands disposed to him, liable for the debts and provisions, which thereby turned heritable *quoad debitorem*, it did not change the nature of these debts, which notwithstanding remained personal *quoad creditorem*. Nor doth it appear to have been the father's intention, by the burdening clause in the disposition, to alter the nature of his daughter's provision, but only to secure her as to the payment; especially considering, that it was not originally constituted by the disposition.

THE LORDS found, that the provision in favours of the four younger children, by the disposition granted by the father to the son, became heritable; and that the brother is presumed to be dead. *See PROOF.*

Fol. Dic. v. 1. p. 372. Forbes, p. 201.

1734. November 21. CLELAND against PROVOST M^{rs} AULAY.

No 111.

A PERSON infeft upon an heritable bond, not payable, nor bearing annualrent till after his decease, having assigned the same in security of a moveable debt due by him, with procuratory and precept, this accessory security was found to make the sum contained in the bond heritable, though the creditor died before the term of payment of the annualrent-right.

Fol. Dic. v. 1. p. 372.

1740. January 8. DUKE of HAMILTON against The EARL of SELKIRK.

No 112.

FOUND, that not only irredeemable dispositions, but also adjudications, heritable bonds descendible to the heirs and assignees of the defunct, although no infeftment had followed thereon, descended to the heir of conquest; but that