daughters, ceded her jointure out of respect to the family; but secured her return to it in the event of a daughter, that she might be in a condition to provide that daughter; and though there might have been many sons, she did not think it worth her while to look to their provision; because the sons of great families are generally better able to provide for themselves than the daughters, whose station and quality is a burden to them, and makes them miserable if unprovided. No 40.

THE LORDS found, That seeing there was no heir male of the marriage, the renunciation was void and null.

Fol. Dic. v. 1. *p.* 191. *Forbes, p.* 618.

1747. *December* 3. BOTHWELLS *against* The EARL of HOME.

No 41.
A person having left portions to younger children, payable on their marriages or majorities, or at their mother's death, which-ever event should first happen, providing that the portion of any of them dying before marriage or majority should fall to the rest; one of them having died before marriage, but after majority, the Lords found, that the condition of the substitution was not purified; and that the portion went to her representatives,

and not to the substitutes.

ALEXANDER, Earl of Home, granted a bond of provision to his brother and two sisters, who were unprovided by their father, in these terms: 'We, with and 'under the provisions and conditions under-written, bind and oblige us to make 'good and thankful payment to Ladies Marjory and Margaret Homes, our lawful sisters, and to Mr George Home, our youngest lawful brother, of the sum 'of 20,000 merks, in manner, and according to the division under-written, viz. 'To ilk ane of the said Ladies Marjory and Margaret Homes, the sum of 7000 'merks, and to the said Mr George Home the sum of 6000 merks, and that at 'the first term after their respective marriages or majorities, or after the decease 'of Anne Countess of Home our mother, which of the said three events shall 'first fall out; together also with the due and ordinary annualrent of the just 'and equal half of the said principal sum, from and after the term of Martin-'mas next to come, and the annualrent of the said hail principal sum from and 'after the said terms of payment, which of them shall first fall out.' By a subsequent clause it is provided, 'That in case of the decease of any of the said 'Ladies Marjory and Margaret, or Mr George Homes, before their respective 'majority or marriage, then and in that case, if one of them deceased, her 'part and portion of the sums should *ipso facto* fall and belong to the other two 'survivors equally betwixt them; and in case of the decease of one or both of 'the said two last survivors, the portion of the deceasing should fall, accresce, 'and pertain to the said Alexander Earl of Home:' Declaring that this bond should be in full satisfaction of all other claims competent to the said brother and sisters out of the succession of either their father or mother.

The two Ladies having survived their majority, took an adjudication against their brother, after which Lady Marjory died unmarried; and Lady Margaret being married to Alexander Master of Holyroodhouse, conveyed in her contract of marriage her own provision, together with the half of her sister's, as accresced to her by the substitution, Lady Marjory having died unmarried, to Henry Lord Holyroodhouse; who assigned it to Mrs Eleanora, Mary and Anne

No 41. Bothwells, his daughters, for their provisions; and they pursued an action of mails and duties against the estate of Home.

Pleaded for William the present Earl; That the Lady Marjory having survived majority, the substitution did not take effect, but her provision fell to her representatives, and, being rendered heritable by the adjudication, to her heir, which he himself was.

THE LORD ORDINARY, 21st June 1745, 'repelled the objection, that by the adjudication Lady Marjory's bond became heritable, and did thereby belong to the Earl; in respect of the substitution therein-mentioned, which was not varied by the adjudication.' And, 16th July, found, 'that the portion of Lady Marjory, who, it was agreed, survived majority, but died before marriage, did accresce equally to the Lady Margaret and Mr George Homes.'

Pleaded for the Earl; The substitution of the children to each other was not simple but conditional, if any of them did not reach the term when their provision became payable, which was at majority or marriage; and accordingly, if either died before majority or marriage, the substitution fell to take place, but it cannot be said Lady Marjory died before majority or marriage, when she survived majority. It is plain the terms of the sum becoming payable, of the commencement of the full annualrents, and of the evacuation of the substitution, were to concur; and as the two first happened at majority or marriage, so must the other.

Pleaded for the pursuers; The provisions in the Earl's bond were not gratuitous, the Countess of Home, mother to all the parties, having renounced part of her jointure, and discharged a debt due to her, as the valuable consideration of it; instead, therefore, of a strained interpretation being put upon it to the prejudice of the children, it ought to be explained beneficially in their favour. But this claim is founded on the express words, that if any of them should die before majority or marriage, the substitution should take place, and Lady Marjory has died before marriage; the question is not what would have been the case, if she had, in a marriage contract, conveyed her portion, and died before majority, the disposition for an onerous cause might have carried the sum, notwithstanding the substitution; but if she had married without conveying it, and died minor, the substitution must have taken place.

THE LORDS, 18th November, 'found, that the substitution was at an end, in respect that Lady Marjory died surviving the years of majority.'

They refused a petition, and adhered.

Act. *R. Craigie & Ferguson.* Alt. *Lockhart.* Clerk, *Kirkpatrick.*

Fol. Dic. v. 3. p. 160. D. Falconer, v. 1. No 216. p. 297.