

No. 10.

\* \* This case is also reported by Kilkerran:

In the year 1688, James Gordon of Carleton settled his estate thus: He disposed, and obliged himself to resign his lands of Carleton, &c. in favour of the heirs-male of his body, whom failing, to John Gordon, third son to Earlston, whom failing, to Nathaniel Gordon of Gordonston, &c. and the heirs-male of their body, with prohibitory, irritant, and resolute clauses, against contracting of debt, &c.

John Gordon, the first substitute named, predeceased the maker, who died without issue-male, and Nathaniel Gordon made up his titles by service as heir of tailzie and provision to him; and after contracting certain debts, disposed his estate in his son's contract of marriage; who having contracted yet greater debts, the creditors of father and son adjudged the estate, and pursued a ranking and sale; wherein, after the death of Nathaniel and his said son, Alexander, the grandchild of Nathaniel, appeared and objected to the creditors, that all their debts were void for want of powers in the debtors who contracted them, in respect the title made up by Nathaniel, from whom his son did derive right, was inept, for that he ought to have served not to the granter of the disposition, but to John Gordon, whom he called the first institute.

But in respect the disposition was not made directly to John Gordon, but first to the heir-male of the granter's body, whom failing, to John Gordon, the title was found to be properly made up by a service to the granter.

Plainly there was no right ever in John, the first substitute, that could be carried by a service.

*Kilkerran, No. 7. p. 512.*

No. 11.

1757. July 6.

WILSON *against* SELLERS.

A PERSON granted bond to a man and his daughter for a certain sum which he had borrowed from them. The father died without ever making any conveyance of his half; nor did the daughter make up any title, but conveyed the bond to an assignee. It came to be questioned, if the daughter ought not to have taken up the share of the father by a general service. The Lords found there was no necessity for a general service.

*Fol. Dic. v. 4. p. 268. Fac. Coll.*

\* \* This case is No. 19. p. 5194. *voce* GROUNDS and WARRANTS.