

1669. June 24.

STEWART *against* STEWART.

No 25.

A FATHER having granted a bond of provision to his daughter, and the heirs of her body; whom failing, to certain persons substitute, her brethren and nephews, and a great part of it to return to himself; in a question betwixt a gratuitous assignee from the daughter, after her death, and the heirs of tailzie, it was *argued*, That the substitution implies a prohibition upon the creditor to do no merely gratuitous deed to evacuate the tailzie.—THE LORDS sustained the gratuitous assignation.

*Fol. Dic. v. 1. p. 308. Stair.*

\* \* \* See This case, No 8. p. 30.

\* \* \* Gosford reports the same case :

OLD Sir William Stewart having advanced the sum of L. 20,000 for the purchase of the lands of Ianernyttie to Sir William his second son, he did get from him a bond for infesting of Jean Stewart his daughter in an annualrent of 1600 merks to her, and the heirs of her body; which failing, to be divided amongst the rest of his children, secluding Sir Thomas his eldest son. In which bond there was a reservation, declaring the sum to be rēdeemable upon the payment of 20,000 merks; as likewise, suspending the payment to the said Jean, or her heirs of tailzie, until the marriage of the said Jean, and five years thereafter. The said Jean having assigned the principal sum and the annualrents to Sir Thomas, her elder brother, and dying unmarried, Sir Thomas did charge for the whole bygones of the annualrent, and for infesting him therein, and payment in time coming; which charge was suspended upon this reason, That old Sir William did take this bond from his son only for security to his daughter of a tocher in case of marriage, the principal sum not being payable but five years after her marriage; and in case she should die unmarried, the sum was appointed to belong to her heirs of tailzie mentioned in the bond; so that she dying before marriage, the sum was only due to the heirs of tailzie, and she had no right to assign the same.—THE LORDS, notwithstanding, found, That by the conception of the bond for infesting of the said Jean, and her heirs of tailzie, she was absolute fiar of the sum, and might assign the same albeit she were not married; and that the condition of suspending payment or requisition till five years after marriage, did not affect the fee, but was only a suspension of the term of payment.

*Gosford, MS. No 146. p. 57.*