

Stair Lib 2. Tit. 3. §. 4. If a Bond be conceived simply to two (Persons) in conjunct Fee, and the Heirs of one of them; the Person to whose Heirs the same is provided is regularly understood to be the Fiar Craig Feud. Lib. 2. Tit. 36. §. 1. Sir James Mackenzie Inst. Lib. 3. Tit. 2. §. 20. Stewart Feud. Tit. Substitution. But this Rule holds only presumptive, and may be overbalanced by strong Presumptions: As when a Father takes Security in Lands to himself, his Son nominatim, and the Son's Heirs; the Fiar is Fiar Mackenzie & ...

When Lands are disposed, or Sums of Money payable to a Man and his Wife in conjunct Fee and their Heirs 24 June 1663. Elizabeth contra Martin, the Husband is Fiar, and the Wife's conjunct Fee resolves on the Fiar, Craig Feud. Lib. 2. Tit. 2. §. 2. vers. et quoniam. Which is violenta et inelencosa interpretatio. Reason cannot be what is ordinarily given; quia potior conditio masculi. Seeing if a Man should provide his Lands by his Contract of Marriage, Male and Female would come in as Fiers of Provision thereof equally. But the true Reason is, because of the Husband's Prerogative. Mackenzie Inst. of Feud. and the Dignity of his Person to whom the Wife is subjected as her Head. But in the fore-said Case of Lands or Sums provided to a Man or his Wife and their Heirs, without further Substitution Sir James Stewart (Feud. Tit. Fiar) thinks that the Fee would only go to the Husband's Heirs of that Marriage, and not failing these, to his Heirs whatsoever. He insinuates with the same Breath, that neither of the alternative Consequences thereof, viz. that the Right should either be caducious or returnable be intended. A Clause in a Bond bearing a Sum to have been borrowed from a Man and his Wife, and making it payable to the longest Liver of them two in conjunct Fee, and to the Heirs gotten between them or their Assigns, which failing, to the Heirs and Assigns of the last Liver, makes the Husband Fiar, and the Wife Liferenter, albeit she be the last Liver, when her Heirs of Line become substitute Heirs of Tailzie to the Husband, failing Heirs of the Marriage 23 January 1660 Justice contra Stirling. The Fee could not be constitute by these Words to the Heirs and Assigns of the last Liver, seeing then it would have been in pendent or uncertain, and in fact in no Person till after the Death of the Husband; but it behoved to be established by the Obligation to pay to the Husband or Wife the longest Liver of them two. The Half of a Sum provided in a Contract of Marriage to a Man and his Wife in conjunct Fee, and to the Heirs betwixt them, which failing to be divided betwixt the Heirs of the Husband and the Heirs of the Wife, being lent out upon Bond payable to the Husband and the Wife and their Heirs.

Heirs, which failing to the Wife's Heirs conform to the Contract. The Property of the Money was found to pertain to the Husband, and to be affectable by the Diligence of his Creditors, with the Assent of the Wife's Liferent 29 January 1639 Graham contra Rankin & Cairnes. A Contract providing David & a Man and his Wife and longest Liver of them two, and the Heirs betwixt them, which failing to the Heirs of the Man's Body, which failing to the Wife's Heirs whatsoever, was found to constitute the Husband Fiar, the Heirs of the Man's Body in the Wife's Heirs. Cap. 24 July 1622 Rankin contra L. Centath. Inst. Lib. 3. Tit. 2. §. 51. Vers. last next Difficulty is, again a Man in a Contract of Marriage obliging the Man to take the Conquest to himself and his Wife in conjunct Fee, and to the Heirs betwixt them, which failing to the Heirs of the Man's Body, which failing to the Wife's Heirs whatsoever, was found to make the Husband Fiar and not the Wife: So that failing Heirs of the Marriage, and of the Man's Body, the Wife's Heirs of Line were Heirs of Provision to him. 20 Feb. 1667 Cranston contra Wharison. For by the Clause of Conquest, it was evident the Means were to come by the Husband's, and as had there been an Heir of the Marriage, or an Heir of the Man's Body, such a one could never have been served Heir to the Wife; so his Non-existence cannot alter the Condition of the Fee. An Assignation is a Reversion provided to a Man and his Wife, the longest Liver of them two and their Heirs, makes the Husband only Fiar Hope. Tit. Husband and Wife Collisoun contra L. Pittsford's Stair Feud. One having for Love and Favour to his Daughter and other persons lawfully assigne to her and her Husband a certain Sum owing to him by a third Party: The Husband was found to have Right to the Fee, and the Wife to the Liferent of the whole 23 July 1713 Edgar contra Sinclair. A Contract making in his Daughter's Contract of Marriage immediately after the Obligation on the Husband's Part, for his which Cause obliged himself to support the Husband and his Wife in conjunct Fee and Liferent, and Heirs betwixt them, which failing the Wife's Heirs and Assigns whatsoever, in a certain Sum of Money, it expressly nomine dicitur: The Husband was found to be Fiar and the Wife only Liferenter, there being no other Facher given to him 12 July 1671 Cairns contra Sandylands. Because, tho' where Lands or Sums are provided in conjunct Fee to Strangers, the Termination of the Succession both ordinarily runs the Fee, and the Liferent to whose Heirs the Provision is made, is regularly understood to be provided supra pag. 461. Yet it is otherwise in conjunct Fees granted to those in conjugal Society, where the Wife's Heirs last mentioned are considered only as Heirs of Provision to the Husband, unless in some excepted Cases, vid. infra pag. 465. In Contracts of Marriage among Burgesses, the Husband is usually obliged to add so much to the Facher, and to employ the same upon Land or Inmuevement to himself and his Wife in conjunct Fee and Liferent, and to the Heirs of the Marriage.