

of the Provision in the Contract 4 Feb. 1726 Gibson and Arbuthnot contra
-porbanks of Hallyards.

But the Presumption of the Man's being Fiar in the Case of a conveyance
of Lands or Sums of Money taken to a Man and his Wife and their Heirs, is not
-*juris et de jure*, but may be taken off by a contrary stronger Presump-
-tion that the Fee is the Wife's and a Liferent only designed for the Husband
-on Heirs; without any onerous Cause resign an Estate fallen to her after Mar-
-riage, in Favour of her self and Husband the longest Livers of them in con-
-junct and their Heirs, and both be thereupon in feft, the Wife would be sole Fiar a
-Husband Liferent only. Stair Lib. 3. Tit. 5. §. 51. Because it is presumed
-her Meaning was not to divest herself of the Fee. But Sir James Stewart
-Fians & Fairies & Tit. Substit in Bonds.) thinks, that if ever Lands coming
-are disposed to the Husband and her in conjunct Fee and Liferent, and in the
-of the Marriage, which failing to the Husband's Heirs of any other Marriage
-failing to the Wife's Heirs and Assigns: The Husband is Fiar, *quia* he receives
-me *procuratur*: Seeing not only the Heirs of the Marriage gotten by him are
-Substitution, but also his Heirs of any other Marriage are substituted in the
-and the Wife's Heirs only in *ultimis tabulis*, who therefore must be Heirs of Pro-
-=tion to the Husband. Where a conjunct Fee of Lands or Sums of Money is granted
-Man and his Wife and their Heirs, by the Wife's Father gratuitously; the Wife
-off the Reversion of Lands belonging heretofore to the Wife, were taken to the
-band and her, and their Heirs; the Wife's Heirs would exclude the Husband's Heirs
-Stair Feid. et Lib. 2. Tit. 2. §. 10. pr. *Mickenzie* Just. Lib. 3. Tit. 8. §. 20. Treat. of
-Fairies it being presumed, that the Reversion was intended to follow the
-table Right: 4. *Dorfen* having in his Daughters Contract of Marriage assigned the
-future Spouses and their Heirs of the Marriage, which failing the Wife's Heirs and
-Assigns, to all Goods and Gear belonging to the Codent the Time of his Decease: The
-Wife was found to be Fiar 4 Feb. 1709 *Fead contra Maxwell* of *Dalswinton* and
-there. Not because the Substitution did terminate upon her Heirs, but because it was
-Favour of her Heirs and Assigns, and none but who is Fiar can assign. A Man has
-=ing granted a Bond for a certain Sum bearing Annual Rent payable to his Sister
-her Husband in Liferent and conjunct Fee, for their Liferent Use altogether,
-to the Heirs and Assigns proceeded or to be proceeded betwixt them in Fee, which
-to the longest Livers of the said Spouses their Heirs and Assigns; with this condition
-and Provision, that it should not be in their Power or in the Power of Either of
-to uplift the principal Sum or any Part thereof, without the special Advice and
-of Trustees named in the Bond; The Fee of the said principal Sum was found
-not to the Husband, nor to be affectable by his Creditors 2 June 1714 *Creditors of*
-contra *Erskin* of *Balgownie*. Because either the Money was originally the Wife's
-sub modo. Nor could the Husband be understood Fiar, from the Clause restraining
-his Power of Uplifting, as if that had been unnecessary, if he were not Fiar; But
-the Money was payable to them for their Liferent Use altogether, and the Husband
-tho he was not Fiar, had *jure mariti* the Administration, which was taken away

that Clause. A Clause in a Minute of Contract of Marriage providing, that
the Wife should be secured in conjunct Fee and Liferent of the Conquest during
the Marriage, and in Case of no Children, the one Half should be disposed of
as she thought fit without mentioning Heirs; was sustained to make her Fiar of
one Half of the Conquest 27 June 1676 *E. Dumfermling* and *E. Callender*.
Where the Presumption of the Husband's sole Right to the Fee was elided,
not only by the Wife's Power to dispose of the Half, which she could not do,
unless so much belonged to herself as her own Property; but also from this
Circumstance, that she brought with her a vast Liferent Annuity of 22000
Marks per Annum, out of which only the Conquest could arise, the Husband
being an indolent Man, who could otherwise make no Improvement of his
Fortune, and had afterwards renounced his Right to the Wife's Fortune,
and obliged himself not to meddle with it without her Warrant in Write, which
was more extraordinary than the Half of the Conquest. So that this was truly
an anomalous Case.

Right to the Fee must be proved
and his Wife and their Heirs must be substituted in the Fee
equally thereto 2 Feb. 1632 *Bastilio contra* *pinglo* 18 Feb. 1637
Mungal contra *Steel* Stair Just. Lib. 2. Tit. 6. §. 10. Lib. 3. Tit. 5. §. 51.
vers. The next Difficulty is *M'nae* Just. Lib. 3. Tit. 8. §. 10 & Treat. of
Fairies Because tho it is not presumable that a Wife will be provided
to the Fee of Lands or Sums of Money; it is reasonable and ordinary to
provide her to the Fee of Movables as *viz* *viz*. And albeit the Husband
might *ante matrimonium* have disposed of the whole Good; yet after the solemnity
of the Marriage they fall under Division. *Sed de hoc constant*. It stands in the Case of *Mungal* contra *Steel* 18 Feb. 1637
a Bond to pay a Sum to a man and his wife and their Heirs gave no more Right to the Wife than she would have had,
albeit her name had not been in the Bond and no mention made of her or Heirs.

in joint Tenants, or those that come to and no Law; or
Tenements jointly by one Title, (who answer to our conjunct Fians in Scot-
land,) have a sole and peculiar Quality of Survivorship; for if there be two
or three joint Tenants, and one has Issue and dies, he or those joint Te-
nant that survive shall have the whole. Litt. 277. 280. *Coke* 1 Just. 100.
But we extend this Right of Survivorship only to conjunct Fees
granted to Man and Wife and the longest Livers, which, tho not expressed would
be understood as implied *Craig* Feid. Lib. 2. Tit. 3. §. 10. Stair Lib. 2. Tit. 3.
§. 41. So much shall suffice concerning conjunct Fees, I proceed to treat of
Fees granted to more Persons subordinately or by Way of Substitution one to a
-nother.

Generally in all Substitutions the main Thing to be considered is the De-
-sign of Parties. Where there are divers Degrees of Substitution of the Heirs
of several Persons, the Person whose Heirs are first in the Institution or
Substitution is Fiar, and both those his own Heirs and others
subordinate