Subordinate or substitute after them in secundis tabulis, are Heirs [illegible]
-vision to that Fiar Stewart's Answers to Dirlet. Doubts Tit. Subst[illegible]
and Bonds & Tit. Fiar. Albeit where a Right is taken to a Father [illegible]
-rent and to his Children of a Marriage to be born in Fee; the [illegible]
Fiar: Yet if Infeftment be given to a Father in Liferent, and to [illegible]
-dren existing and named in Fee; the Children are joint Fiars an[illegible]
-ther a naked Liferenter. ~~Where~~ Stewart ibid. Tit. Provisions in [illegible]
Where a Right is conceived in Favour of a Man [illegible] on Life
his Decease, or in Case of his Decease, or failing of him by Decease
nominatim, or some other Person; the Father is Fiar, and the So[n]
Heir substitute to him, albeit both the Father and the Son were infeft [illegible]
the Latter's Infeftment in the Former's Lifetime, is understood [illegible]
taken only to complete the Security, and to supply the Want of Inf[illegible]
as Heir after the Father's Death, 23 July 1675 L. Lamington [illegible]
Moor 14 January 1663 Beg contra Nicolsons. A Man havi[ng]
-ted a Bond of Provision to his Daughter, and to the Heirs of [illegible]
which failing to return to himself: The Daughter cannot disappo[int]
Provision of returning failing Heirs of her Body, by any gratuitous [illegible]
tho she may do it by assigning the Bond for an onerous Cause, as [illegible]
Tocher 31 January 1679 Drummond contra Drummond Stewart [illegible]
Tit. Provision in Bonds. Because she might have uplifted and sp[ent] [illegible]
tho she had never married; and the Father's Design appeared to have be[en]
that his own Heirs should be preferred to Strangers. A Sum in a [illegible]
-ing payable to the Creditor and the Heirs of his Body, which failing [illegible]
remain with and belong to the Debtor; this gratuitous Substitution is alt[e]
-rable by the Creditor at Pleasure: Unless an anterior Cause appear [illegible]
might infer an Obligation upon the Creditor not to alter the Substitution [illegible]
when Parents grant Bonds of Provision to Children, or cause their
Heirs apparent grant them with a Clause, that the Sums failing Childre[n]
&c. of the Granter's Bodys should return to the Granter & Heirs 18 No[v]
1680 Murray contra Murray. Which anterior onerous Cause in such [illegible]
cannot be proved by Witnesses; McKenzie Treat. of Tailzies. If a
Father oblige himself by a Bond of Tailzie to resign in Favour of
himself in Liferent, and after his Decease in Favour of his Heirs: [illegible]
Father remains Fiar, and the Liferent is to be interpreted only usu[s]-
-fructus causalis McKenzie ibid. Where a Father dispones his Lan[ds]
to his Son in Fee, reserving his own Liferent, the Son is sole Fiar and [the]
Father only Liferenter McKenzie ibid. But a Father having taken a

Bond

Bond of borrowed Mony payable to himself at a certain Term in Liferent
and in Case of his Decease to his Son nominatim in Fee, the Father [illegible]
Fiar 28 July 1626 L. Tullialan contra L. Clackmannan. Nor was the
Father in such a Case allowed only to call for the Mony, in order to reimploy
it in Favour of the Son but even to discharge it without an onerous Cause
20 February 1629 L. Drumkilbo contra L. Stormont: So that perhaps there
is a Difference betwixt Rights made by a Father [illegible] Lands or Sums, and
Rights made to him of Sums payable [illegible] Substitutes: It being pre-
-sumed, that these last were made principally in his own Favour, and that
hoc non agebatur thereby, to convey any Right to [illegible]
-ther, or to debar him from seeking Payment; but only that the Son shou[ld]
succeed as Fiar, in Case the Father required not the Mony. [illegible]
Craig (Feud. Lib. 2. Tit. 3. §. 10. in fin.) and the Lord [illegible] (Inst. Lib.
3. Tit. 4. §. 23. vers. Heirs of Tailzie) insinuate, that when Heritage is
provided to one, and after his Decease to another and his Heirs, the Person
to whose Heirs the Right is granted, is understood to be Fiar, and the other only
a Liferenter, tho it be otherwise in Bonds. But Sir James Stewart [illegible]
to Dirlet. Doubts Tit. Heirs of Provis. and Substit. seems to be of a diffe[rent]
Opinion, when he asserts that in such a Case the Substitute will be under-
-stood Heir of Tailzie. And Lands being disponed to [illegible]
him by Decease to his eldest Son and the Heirs Male of his Body, which failing
to ~~the~~ his second Son and the Heirs Male of his Body; and the eldest Son
having died without serving Heir to him; the Rights of the Lands dis-
-poned was found not fully vested in the Person of that Son without a Service;
and therefore the second Son was allowed to be served and retoured Heir to
the Father 10 June 1714 Hamilton contra Hamilton of Dalyel. Because
the eldest Son being brought in only by Way of Substitution and Succession
failing the Father by Decease, there was no conjunct Fee designed and
upon the Father's Decease it was haereditas jacens till the eldest Son [illegible]
next called should enter. For Substitution is only Institution in a further
Degree; and the eldest Son could not have enjoyed the Estate disponed
without acknowledging his Father's Debts and Deeds. Nor doth the Essence
of Substitution consist in this, that the Persons substitute are generally
called under the Designation of Heirs, but in this that one is called to a Right
by way of Substitution upon the Demise of another, and so takes it up by Way
of Succession. But Persons nominatim substitute in Bonds for Mony, or in
Rights to Movables, need no Confirmation or Service to establish their Rights

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