of Payment of the Provision: That Child's Portion evanisheth [illegible]
the Survivor is considered as the only Child. Stewart [illegible]. One having
obliged himself to pay to his younger Children particular Sums one Half
thereof at the first Term of Whitsunday or Martinmass after his Decease
and the other Half at their respective Majoritys and the Ages of 21 Years
with this Proviso: that in Case of the Decease of those Children before
they attain to such an Age without being married or having Children
the Portion of the Child deceasing should accrue to the surviving
Children, and be equally divided amongst them the eldest drawing a
Share with him; and one of these Children who was a Daughter having
died before her Father without attaining to the Age of 21 Years
another who was a Son brought an Action against his eldest [illegible]
the Heir for a Share of his Sister's Portion. It was pleaded for the
Heir that his Sister having died before her Father her Portion
like a Legacy, was never due, and consequently could not pass to
Heirs and Substitutes: For that Bonds of Provision payable at a certain
Term are conditional, provided the Children who are Creditors survive
such a Period, and if they do not the Provision and Institution [illegible]
and where there is no Institution, there can be no Substitution [illegible]
It was answered, tho in the common Case of Legacys, the Legatee if
he died before the Testator, cannot transmit to his Heir the Hope of
the Legacy which was all he had at his Death: Yet the Testator may
substitute one to the Legatee; who in Case of his Dying before the Testa-
-tor, may enjoy the Legacy. In this Case it is not properly by Way of Subs-
-titution that the Children draw their Share of the Portion of
the deceased, but as conditional Institutes after the Condition is purified
they need no Service to the Sister deceased nor by getting her Portion would
be liable to her Debts. The Lords found that the Provision of the predecea-
-sing Children accrued to the surviving Children January 1726 Denholm
contra Denholm of Cranshaws.

A Question is commonly proposed if Children who are in the
Condition are in the Disposition; that is to say, if a Substitution being
made to one in Case he should happen to die without Issue, the Children
who surviving their Father make the Right of Substitution to cease
are themselves substitutes. Some (Ant. Fabrius Controv. Lib. 4. Cap. 51. [illegible] contrib. Forens. 96.)
Niger Cyriacus are of Opinion that the Children are substituted. But others (Jo. Voet
Comm. ad Tit. ff. de Lib. & posthum. N. 9. Les Loix Civiles &c. Tom. 1.
Part. 2. Liv. 5. Tit. 3. Sect. 3. Art. 10.) ~~Ind. Nig. Cyriac. controv. For. 6[illegible]~~ with better Reason are of a contrary
Opinion that there is no Substitution with Respect to the Children.
For when one dos no other Thing but ~~barely~~ dispose in Favour of a
Substitute

Substitute in Case the Institute have no Children his Intention appears
to be, that in Case there be Children, their Father shall not be any longer
charged with the Substitution but shall have free Liberty to dispose of the
Estate in Favour of whom he will: which he could not be had the Children
been substituted, and if he had had the least View to call the Children to
the Substitution he would have substituted them in the first Place and
not called another Substitute except in Default of the Children. Thus a
Clause in a Contract of Marriage, in Case there be not [illegible] Heirs Male
procreated betwixt the contracting Parties [illegible] [illegible] [illegible], was
found a [illegible] Obligation to provide that Estate in Favour of Heirs Male
of the Marriage [illegible] January 1706 [illegible] [illegible] [illegible] [illegible].

Possible Conditions in real Rights are either personal ~~[illegible]~~ only af-
fecting the Receiver and his Heirs or real affecting his singular Successors.
The personal Conditions or Provisions are [illegible] [illegible] Stair Inst. Lib.
2. Tit. 1. § 4. in fin. Clauses of Warrandice (Stair [illegible] Tit. 3. § 54. in
fin.) where a Disposition bears both in the Procuratory and Signation
and Precept of Seisin, a Clause that the Receiver should be obliged to
pay all the Disponer's Debts contracted [illegible] [illegible] [illegible], that Clause
doth import only a personal Obligation upon the Receiver [illegible] the Disposi-
-tion to pay these Debts and [illegible] not affect the Lands disponed in the Per-
-son of a singular Successor [illegible] [illegible]. November 1665 [illegible] [illegible] contra
Dundass of Arniston. Real Conditions with which Dispositions or other
Rights may be burdened are reserved [illegible] one or more, which pass
therewith effectually as a real Burden to all singular Successors without
any other Infeftment than what they are ingrossed in and the Exception
of other Infeftments is, if in the dispositive Clause, effectual against such
Successors Stair [illegible] § 58. Again Faculties or Powers reserved to the Gran-
-ters of Rights to affect or burden them either absolutely at their Pleasure,
or with certain Sums to Children or Creditors are real Burdens affecting
the Subject disponed. Which reserved Faculties in Dispositions by Persons to
their eldest Sons are amply interpreted against the Receivers of such
Rights and their Heirs; tho more strictly against singular Successors acquir-
-ing from them for onerous Causes Stair [illegible] § 54. Thus a Father having
in a Disposition of his whole Estate to his eldest Son, reserved a Power to burden
the same with a Sum, and thereafter granted a movable Bond to his Daughter,
the said Estate, in so far as the ~~[illegible]~~ Father's Executry fell short, was found affected
with the Bond, tho it made no Mention of the reserved Power, 24 June 1677
Hoppringle contra Hoppringle. One having disponed his Estate to his Son
in his Contract of Marriage, reserving Power to burden it with Portions to his
younger Children; an heretable Bond of Provision granted by him thereafter
to