

to these younger Children with a base Infeftment, was, without Possession preferred to posterior publick Infeftments of Creditors apprising from the Son upon his Bonds corroborating the Father's anterior Debts: In the first the Son's publick Infeftment was burdened with the Children's Infeftment and the Father had a sufficient whole Estate at the Date of the Son's Infeftment to satisfy it and all his Debts 6 January 1677 & 11 & 16 December 1677 Creditors of Woodhead contra his Children. A reserve Power to Surmount the Estate with a Sum to the other Children is benignly interpreted in favour not only of Children then extant, but also of Children to be born in the present or any subsequent Marriage. McKenzie Treatise of Feudal Rights sometimes upon extraordinary Drifumptions it is limited to Children the present Marriage 3 January 1679 Gibson contra Thomson. Where the Disposer has Lands with the Burden of his Debts contracted and to be contracted or where the Disposition bears that upon such a Condition the Disposition is granted and no otherwise; the Lands stand really affected with the Disposer's Debts real or personal whether contracted before or after the Disposition, even to the Prejudice of a singular Successor deriving Right from the Receiver of the Disposition. November 1685 L. Ballantyne contra Dundas of Arriston Stair Jhd. 9. 55. But the Creditors of the grantee of the Disposition, would in a Competition among themselves be ranked according to the Priority of their Infeftments or Diligences 16 December 1700 Davidson of Tullinvarga contra Town of Aberdeen. Thus Debts with which a Disposition and Infeftment was burdened, were preferred to all the Debts upon that Estate contracted by the Receiver of the Disposition but ranked among themselves according to their respective Diligences and those upon which Resolutions had been attained preferred to such as were not adjudged for 30 June 1714 Creditors of Duke of Buchlorsin competing. Clauses burdening Dispositions of Lands with the Payment of Sums, give those in whose favour such Sums are conceived, no present Right to the Lands; But the Lands pass to singular Successors affected therewith, and may be apprifed or adjudged for the Same. v. g. a Disposition of Lands to one with the Burden of an Annualrent out of them to another, doth not constitute the Annualrent, but is a Ground to adjudge such an Annualrent out of the Lands Stair Jhd. 9. 58. A Wife having disposed some Lands to her Husband's Children of another Marriage, which falling to her own Brother with this Provision, that the former Succeeding by Virtue of that Disposition should pay 100 Lib. Sterling to the latter, and he happening to succeed by Virtue thereof, should pay particular Sums to Persons therein mentioned: The Brother succeeding ab intestato without acknowledging the Disposition, was found liable simply to these Persons for the

the Sums payable to them, but liable only for so much thereof as he had free in his Hand over and above the 100 Lib Sterling retain'd for himself tanquam principium 22 Dec 1712 Curial contra Heir For it was not supposeable that the Disposer intended to put her Brother in a worse Case when her Creditors were as they then had been secured by the Existence of the Disposition, than for him in which Case the Creditors of the Disposition had no Preference to any Thing. The having disposed to another person in his Name (viz. Arms) his whole or part of an Estate with the Burden of paying a certain Sum to a third Person, whose Disposition contain'd an Arbitrariness in Case of non Payment of a certain Sum, It was found, that albeit the said Estate in which was (great Value) was evicted by the Disposer's Heir for non Payment of the said Sum, the Receiver of the Disposition was bound to pay the whole Sum to the Relations without any Abatement referring to the Estate evicted. In respect a Disposition with the Burden of a Sum, imports a Preference to that Sum, which affects the whole Subject disposed, and ought to be paid so long as there remains sufficient Subject unwritten 0 Feb. 1680 Stewarts contra Roy. Just as an Heir institute simply, gets no Abatement of Legacies with which he is burdened in Case any Part of the Heritage be evicted: Because a Legatary should rather have the Sum required than the Heir, it being the direct Intention of the Decedent to divert it from the Heir albeit nothing remained to him. The where an Heir is institute ex Semisse vel ex certa parte, my Executors or Distributors must affect the Legacies proportionably, the Heir's Part in that Case being considered as a Legacy or celebratio hereditaria. But a Man having disposed his whole Lands and Movables to his eldest Daughter with this Provision, that she should pay 16000 Merks to his other two Daughters, and the Disposition of the Lands being reduced upon the Heir of Death-bed at the Instance of these other two Daughters as Heir's Portioners with the eldest, and the Disposition of the Movables sustained to intitle her to the said part thereof as a Legacy: The eldest Daughter was found to have Right to the said Legacy free of the Burden of paying 10000 Merks to her Sisters. Because in Father Wills the Mind of the Testator whether expressed or implied is chiefly regarded: And here his Intention being plain to give his younger Daughter <sup>only</sup> 10000 Merks in Satisfaction of all Rights and Movables.