which being Compensated, the gives to the Eldest 3000 Merks and to the second 2000 Merks Declare: Whereby the draws out of the estate only 1000 Merks Stair ibid. vers. But the Main Difficulty Rests, This may Clear the case as to Liquid Sums. Thus it is as to bonds granted to several heirs portioners who are heirs of bin and thereby Mutually Creditors and debtors to one another. But it is other ways as to provisions made to the heirs of Different Marriages: where the heirs of provision are Creditors as to the heirs of Inc. Rid. Sup. 1 Jan. 1748. Where lands for which Suitors to be given in the Inferior Court fell to Diverse heirs portioners, the Eldest heir Female gives Suit for her self and the rest her sisters Spotswood Pral. Pt. Courts.

One serving himself heir to a Remotter predecessor last Infeft passing by his immediate predecessor who died Unentred after the line possessed the estate three Years, is liable to the debts and obligations of the said Interjected predecessor, only to the Value of the estate, deducting debts already paid: Whose own debts, and those of the predecessor to whom he enters, are preferred to the debts of the Interjected predecessor Act 24 Sept. 5 Par. K. W. Thus one passing by an apparent heir who had been three Years in possession and serving heir to the predecessor last Infeft, was found liable to Implement the apparent heirs Rational Deed in his Contract of Marriage in Respect there were Reckoned Onerous and Deed Implying Warrandice on the granter 17 January 1724 Muirhead contra Muirhead. But the Statutes Subjecting the heir passing by to the debts and Deed of the Intermediate apparent heir do not extend to gratuitous bonds of Tailzie or Destination of Succession made by such Intermediate apparent heirs, but to grounds of Dispute arising betwixt heirs and Creditors of the Deceased Apparent heirs 26 January 1726 M. of Clydesdale contra E. of Dunmonald. And one passing by an apparent heir three years in possession and there by Liable to his debts, had Relief of the apparent heirs Representatives in any other pursuit January 1727 Inter Cockburn & the Deacon where the law requires a possession for three years by the Intermediate apparent heir, in order to make the heir passing by liable for his debts and deeds can be no other than this, that bona fide Contracters, by being a Man so long in possession, might be Judged to have the Completed his title to the estate. But an adjudication against an apparent heir for his own debt who had three Years in possession without Infeftment, is not a sufficient ground of preference in a Competition for Creditors and Duties with a Disposition from a person Infeft as heir to the Remotter predecessor; without prejudice to the adjudger to pursue the heir passing



passing by the Immediate predecessor as liable passive for his debts 1 July 1707 Simson contra Hamilton.

Heirs Nominatim substituted in bonds, are liable only to the Value of the sums they got by the substitution 3 July 1666 Fleeming contra Fleeming Stair Ab. 3 Tit. 5 § 16 Mckenzie Inst. Lib. 3 Tit. 8 § 26. Such are not liable in solidum to the whole debts of the Substitute, but only in quantum is obvenit: Because they succeed not in Universum Jus, but in a particular sum, and were not to be entered heirs by a service, and are Interpretative only like to heirs. Nor is that such Clauses of substitution according to their Nature, do not Constitute the original Creditor a Naked Liferenter, and are understood as if they were conceived thus: with power to him to alter and dispose of at Discretion during his life. So that upon the Matter, these heirs substitute succeed in effect as ordinary or Conditional heirs Stair ibid. § 51. vers. as to the second question.

Heirs of tailzie do not Represent the Deceased in obligations contrary to the terms of the tailzie 3 Feb. 1674 Drummond contra Drummond 28 January 1688 Binny contra Binny 10 March 1683 Riddoch contra Drummond. Nor yet do heirs of provision Represent him simpliciter as to be liable to all his debts and deeds: for if they Digest security by Contracts of Marriage, would be in hinge Stair ibid. § 19. The Lords of Session decided once Declare heirs and Bairns of provision in a Contract of Marriage, liable to relieve the Cautioner, after the Contriver had first discussed the heir of line: for adding thereof a Competent time were Allowed ex officio judicis to the Cautioner 9 March 1684 Buchie contra Mirzies. And where there was no heir of line to discuss, on the heirs and bairns obliged after the father's death to relieve the Cautioner in the Contract Immediately 23 Novemb. 1677 Crawford contra Kennoway. As if all the security by such a Cautionary obligation for the provision of Children of a Marriage were only that Implement may be pursued in the Fathers life when the Children cannot be heirs and to the Defence of such Relief is not Competent. Because the heirs or bairns of a Marriage after the fathers death are unquestionably heirs of provision to him, the designation of bairns may be sustained in place of a service, and will, unless they abstain and renounce their provisions, be liable to the Creditors of the father, and Consequently to his Cautioner in Valorem. But afterward it was found, that albeit a fathers Cautioner for Implement of the provision made to his heirs and bairns of a Marriage, be Creditor to the father for his Relief; the heirs or bairns to whom he is Cautioner for such provision, are not bound to Relieve him 18 Decemb. 1707 Dickson of Hartree contra Milne of