* N. L. one having obliged himself to pay to each of 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 Majorities and ages of 21 years, with this provision; That in case of the decease of any of those children before they attain'd 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 Son drawing a Share with them; and one of those children who was a daughter having dyed before her Father without attaining to the age of 21 years, another brought an action against his Eldest Brother the Heir for a share of his sisters 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 transmit to Heirs & substitutes. For Bonds of provision pay= =able at a certain Term are conditional provided they survive such a period, and if they do not, the provi= =sion and Institution is void. And where there is no Institution there can be no substitution. To which It was Answered Tho' in the common case of Legacies, the Legatee if he die before the Testator, cannot transmit to his Heirs the hope of 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 Testator, may enjoy the Legacy. In this case it is not properly by way of substitution that the children draw their share of the portion of the deceast but as conditional Institutes after the condition is purified. They need not serve to the deceas'd; nor by getting her portion would be liable to her debts. The Lords found that the provision of the predeceasing children accresced to the surviving children January 1726 Denholm contra Denholm of Cranshaws.

* N. L. where an Estate being tailzied with prohibitory and Irritant clauses, the Tailzie was was never registred, nor any Infeftment followed upon it, and the immediate Heir of Entail served and Retoured himself Heir of Tailzie without Inserting the conditions Limitations and Irritancies in the Retour, and so possess'd the Estate during his Lifetime: The next member of the Tailzie insisted against the former's son who continued his fathers possession, to have the Irritancy of his Right declared, upon this Ground, that the General Retour aforesaid did not contain the conditions and clauses irritant. It was Answered for the defender, 1° The Irritancy cannot be incurred in this case upon the account of such omission, because the Estate becomes not thereby Exposed to Creditors against whom the Tailzie never having been registred, is not effectual. 2°/ The Repeating of the clauses can refer only to a special service, after the Tailzie is cloathed with Infeftment: And no general service, upon which only the defenders father's Retour proceeded, ever contained the Irritancies of the Right upon which the succession is founded; a General service being no title or conveyance of the Estate, but only a Right to an unexecuted procuratory of Resignation or precept of seisin in order to expede charters and Infeftments thereon, in which the clauses Irritant are to be repeated because no conditions can qualify Infeftments that are not therin inserted. It was Replyed for the pursuer, 1° Altho' the not Recording the Entail is not made an Irritancy upon the Heir, which is a defect in the Law, the not repeating the clauses is an express irritancy. And if the Heir contrary to the design of the maker of the Entail neglect to Record it that it might be effectual against Creditors, he can reap no advantage by his own omission. When an Entail appointed two things to be done, one under an express Irritancy, the Heir cannot escape the force of the Irritancy, or distinguish himself for his not repeating the clauses, by saying he hath been guilty of the other fault viz. not Recording the Entail. 2°/ Where no Infeftment hath past upon a Tailzie to make it effectual against creditors it must be recorded, and the Irritancies repeated in the personal conveyances and it was never before asserted that a General service is not a conveyance; and the defenders father possess'd by no other Title than the General Retour. The Lords found that the defenders Father's retouring himself Heir of provision to the maker of the Tailzie without repeating in his Retour the provisions and Irritant clauses of the Tailzie, and possessing and enjoying the tailzied Estate by virtue of the Retour, doth import an Irritancy of the Heirs Right. 21 February 1726 Stewart contra Denholm of Westshield. And found that the defender could not purge the Irritancy incurred by his Father post litem contestam; Because the Irritancy is not penal but arises only from the will of the maker of the Tailzie who imposed such a condition to the fulfillment of the Estate that upon the not observance therof it should go from one person to another: The Heir had it in his choice by inserting the Irritancies in his Titles to preserve the Estate, or by not inserting them to forfeit. Besides If such an Irritancy were purgeable, it would tend to overturn the best Tailzies. For no Heir would insert the Irritancies in his Infeftments till he were put to it by a Declarator which might be delayed long enough thro' the non-existence, Ignorance, want of Ability or other the connivance of the posterior Heirs of Tailzie; and in the mean Time the Estate may be torn to process by Creditors.

④ The tho' he might have purged the Irritancy by compleating his infeftments and inserting the irritant clauses therein before he took possession; but so long as that he [illegible] by the Retour only and continued to possess [illegible]