

No. 260.

against her father's general heirs, either male or line, or heirs-portioners, but with the burden of Margaret's provision of 5,000 merks.

Stair, v. 2. p. 550.

* * See Gosford's report of this case, No. 77. p. 15475. *voce* TAILZIE.

1679. December 11.

STARK *against* KINCAID.

No. 261.

A disposition of land sustained, though found among the disponent's writs at his death, without a clause dispensing with not-delivery, as it bore a clause reserving the disponent's life-ferent, and power to alter.

Robert Stark having adjudged two acres of land belonging to umquhile Robert Nasmith, pursues a reduction of a disposition granted of the same acres by Nasmith to Thomas Kincaid on this reason, that the said disposition is already proved to be amongst Nasmith's writs the time of his death, and therefore was never a delivered evident, and so null. The defender alleged absolutor, because the disposition bears "a reservation of the disponent's life-ferent, with power to alter during the disponent's life," and therefore without delivery, or a clause dispensing with the not-delivery, the writ is effectual, and equivalent, as if a dispensatory clause were inserted, especially seeing the defunct had no children. There was a practique produced for the like *in anno* 1668, Hadden against Shorswood, No. 256. p. 16997.

Stair, v. 2. p. 720.

* * * Fountainhall reports this case :

Reduction of a disposition because undelivered. Answered, It bears a power to alter and renovate, which is in law equivalent to a clause dispensing with the not-delivery, as was found 19th June, 1628, Agnes Hadden and Mary Lauder against Shorswood, No. 256. p. 16997. The Lords found this reservation of a life-ferent, and to alter, had the force of a delivery; but likewise that it included a power to contract debts, and therefore found it was burdened with the debts contracted by him after the date of it; which last interlocutor was on the 23d December, 1679.

Fountainhall MS.

1680. January 6.

M'BRIDE *against* BRYSON.

No. 262.

A declaration under the hands of a defunct, that a disposition which he had

James M'Bride having adjudged a tenement in Edinburgh from the heirs of Mr. Andrew Bryson, pursues a reduction of a disposition by the said Mr. Andrew to Andrew Bryson his cousin-german, on this reason, that the disposition "reserves a power to the Bailie at any time in his life, *etiam in articulo mortis*, to dispoise this tenement, or to alienate or wadset the same;" and long thereafter there is a de-