

required in the office is broken; *nam securius expediuntur negotia commissa pluribus*. So that Mr. Kennedy loses his right upon his father's deprivation; not by way of punishment, but by an implied limitation in the conception of the gift itself, bearing only to them jointly, which cannot subsist in one.

The Lords found, That the reduction of Sir Andrew's right upon malversations, had the same effect against his son's right, as if he, Sir Andrew, were naturally dead.

*Page 286.*

1709. *January 26.* Mr. JAMES HILL, Minister at Kirkpatrick, and AGNES MUIRHEAD, his Spouse, *against* GEORGE MUIRHEAD, Son to the deceased JAMES MUIRHEAD, late Bailie of Drumfreis.

BAILIE MUIRHEAD having taken an heritable bond for 7500 merks principal, from Sir Robert Grierson of Lag and others, In favours of himself and his assignees whatsoever; and failing of him by decease, to Robert, Samuel, and George Muirheads, his sons, equally and proportionally amongst them, and the lawful heirs of their respective bodies; and failing one of these by decease, without any such heir, to the other two, and the heirs of their bodies; and two of them so failing, to the survivor, and Isobel, Jean, and Agnes Muirheads, the Bailie's daughters, equally and proportionally, their heirs and assignees whatsoever: After the death of the father, and Robert and Samuel, who died before him without children, Agnes Muirhead and her husband pursued Sir Robert Grierson for payment of a fourth part of the sums in the bond.

Compearance was made for George Muirhead, who alleged, that by the decease of the brother, who died first, he came to have right to the half of the bond: so that afterwards upon the other brother's death, the substitution in favours of him and his sisters could only extend to the defunct's half, whereof Agnes could claim only a fourth part. It is not to be supposed that the father, who provided a third share to George, in case his two brothers had lived, designed to restrict his portion after their death in favours of the daughters; who were only brought in with him, upon such an event, in the last place: and no substitution can exceed the share of the institute to whom the substitution is made. 2. George must at least have as much as all the sisters; because he is put in one sentence by himself, and the three sisters are contained in a separate sentence, and so are to share but as one person, *Arg. § 6. Instit. de Hæred. Instit. Vinnius ibid.*

ANSWERED for the pursuers,—1. We are not to inquire into the father's design, where his words are clear, that the money should be divided equally betwixt the surviving son and his three daughters; and the father had the free disposal of his own without rendering a reason for his destination. And albeit George might have pretended right to the half of the brother's portion who died first, had he survived the father, and thereby established the fee in his person: the father, who was fiar of the money, having survived the two sons, George and his sisters must be considered simply as joint successors to

their father. 2. George and his sisters are all conjoined in one sentence of substitution, without any other distinction except that of male and female.

The Lords found, that Robert and Samuel Muirheads, two of the substitutes in the bond, having died before James Muirhead, the father, who was fiar; the sums contained in the said bond fell to George Muirhead, the surviving son, and his three sisters equally and proportionally; and that the pursuer, one of these sisters, had right to an equal fourth part thereof.

*Page 312.*

1709. *January 26.*

[ANENT the ADVOCATES for the POOR.]

The Lords ordained the advocates for the poor to be named yearly, in November, for the subsequent year; and those named to continue till others be put in their place: and any advocate who begins with a poor cause, to continue therein *usque ad sententiam*, or till it be brought to a conclusion.

*Page 313.*

1709. *Feb. 11.* The GOVERNOR and COURT OF DIRECTORS of the BANK OF SCOTLAND, *against* the COMMISSIONERS of the EQUIVALENT.

THE Directors of the Bank having, at the desire of the Privy Council, undertaken the re-coinage of all the current coin of Scotland, upon the conditions specified in an act of Privy Council; they received in the old species from all inbringers, for which they paid current coin; and gave in the said old species to the mint. As this was melted down and essayed in presence of the three Commissioners and Essaymaster, appointed for that end, the Bank was to receive a certificate for the loss in recoinage, upon the Commissioners of Equivalent, to be paid on demand, and the Master of the Mint's bond for the rest, payable in weight and tale, in the terms of the Act of Parliament, 1686. There happened in the coining sometimes an excesse on the tale of five or six shillings, or thereby, in one hundred pounds, over and above the sum contained in the Master of the Mint's bond; through its not being possible to keep every piece of money to its due proportion of weight.

The Commissioners of the equivalent being charged by the bank to make payment to them of L527 7s. 10d. Sterling, as the difference upon the recoinage of the Scots and foreign money, with one half per cent. making in all L539 9s. 2d. contained in a certificate under the hands of the commissioners appointed by the Privy Council, for receiving in the old money: the Commissioners of the Equivalent suspended upon this reason, That the bank was debtor to them in a sum exceeding the charge, by the excesse of the specie after recoinage.

Answered for the DIRECTORS OF THE BANK,—The suspenders have no right to this excescence; nor cannot, upon account thereof, pretend retention or com-