

No. 8. in place of the defunct proprietor ; and if not confirmable at the instance of the nearest of kin, far less by a creditor, who in these circumstances wants not a habitable diligence to affect the subject ; for here he has the substitute whom he can charge to enter heir, and upon his renouncing, the way is patent to an adjudication of the subject, as a *hæreditas jacens*.

“ The Lords found the bonds in question not confirmable.”

*Fol. Dic. v. 2. p. 366. Rem. Dec. v. 1. No. 103. p. 197.*

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1731. July 10. M'CULLOCH against M'LEOD.

No. 9.

JOHN DOUGLAS resigned his lands in favour of himself, and the heirs-male of his body, which failing, to Hector Douglas *nominatim* ; and infeftment was expedited accordingly. John Douglas having died without heirs-male of his body, Hector disposed the lands, without making up titles. After his death, the disponee insisting upon his right, it was found, that Hector was only substitute, and could have no right to the lands without a service. See APPENDIX.

*Fol. Dic. v. 2. p. 368.*

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1748. February 8.

The CREDITORS of CARLETON, against GORDON of Carleton.

No. 10.

Upon a disposition of lands to take effect at the disponent's death, with reserved powers, a service, by a remote substitute, to the disponent, was found a proper title, the first substitute having predeceased the disponent.

JAMES GORDON of Carleton disposed his whole heritable estate which at that time pertained, and should happen to belong to him any time betwixt and his decease, to and in favour of the heirs-male of his body, which failing, to the persons after-mentioned ; whom he appointed to succeed him as his heirs of tailzie and provision, and granted procuratory for resigning the particular lands therein mentioned, and all his other lands, &c. presently pertaining, or which should accresce to him before his decease, for new infeftment to be granted to the heirs-male of his body, which failing, to John Gordon, third son to Mr. William Gordon of Carleton, and appointed Nathaniel Gordon of Gordonston the next substitute in the tailzie, failing of the said John, which failing, another person, and the heirs-male of their bodies, which failing, any other person he should please to name, *etiam in articulo mortis* ; reserving to himself power, *etiam in articulo mortis*, to annul or alter this deed, or dispone, burden, or contract debts upon the estate.

James Gordon died, and the possession of the estate was taken up by John, who expedite no infeftment ; and deceasing, was succeeded by Nathaniel, who served himself heir of provision in general to the maker of the tailzie, and disposed the estate to Alexander his son, who predeceased him ; and both these had contracted debts upon which adjudications were led.