

assignees. THE LORDS found, there was no such substitution in the right as to deprive any of the daughters of the free disposal of their respective shares, and therefore sustained the assignation. See APPENDIX.

No 16.

Fol. Dic. v. 1. p. 306.

1736. July 6.

EDGAR *against* JOHNSTON.

No 17.

WHERE one had provided his estate in his contract of marriage to the heir-male of that marriage; which failing, to his heirs-male of any marriage; which failing, to the heirs-female of his present marriage; there being no heirs-male of that marriage, it was FOUND, that the heir-male of his second marriage might gratuitously alter the succession in prejudice of the heir-female of the first marriage.

In a simple substitution, one substitute is not creditor to the other.

Fol. Dic. v. 1. p. 306. Kilkerran, (FIAR ABSOLUTE AND LIMITED) No 1. p. 192.

* * * Lord Kames reports the same case :

AN estate being settled, in a marriage contract, to the heirs-male of the marriage; which failing, to the heirs-male of any other marriage, which failing, to the heirs-female of the present marriage, the question occurred, If the heir-male of the second marriage, who succeeded to the estate, there being no heirs-male of the first marriage, could gratuitously disappoint the heirs-female of the first marriage, which he did by disposing his estate to a stranger? For the donee it was *pleaded, imo*, That, in this case, the granter was under no limitation with regard to the heirs-female of the marriage; for, if he was under no limitation to heirs-male of another marriage, which is clear, far less to those postponed to them. *2do*, Destinations in contracts of marriage, though they limit the father, onerous *quoad* him, do infer no limitation upon any of the heirs succeeding in virtue of the destination, because the provision is fulfilled, by making over the estate to the heir-male of the marriage, and the more amply it is made over to him, the more amply is the provision fulfilled. THE LORDS found the son of the second marriage could gratuitously alter the destination in the contract of marriage. See APPENDIX.

Fol. Dic. v. 1. p. 306.

1739. June 22. Competition, ANN NAPIER with JEAN CRAICK.

No 18.

By the post-nuptial contract of marriage between William Craick of Duchrae, and Ann Napier his spouse, among other provisions to children of the

Found that a father could not qualify a)