

No 55. 1781. June 14.

CATHARINE GERRAN and her Husband *against* JOHN ALEXANDER of M'Kilston.

A LAST will was expressed in the following manner: 'I leave to Catharine  
' Gerran, spouse to James M'Ghie merchant in Stranraer, the sum of L. 300  
' Sterling in liferent alimentary, and to be divided by her among her children  
' at any time before her death; and, failing of her dividing the above sum, it  
' is to be divided by the heirs and representatives of the said John Alexander,  
' the testator, as they shall think proper.'

It became a question upon this clause, how far the mother could affect the  
legacy? and 'the LORDS found unanimously that she had only a right of life-  
rent.'

The Lord reporter observed, that by many decisions, it had been found that  
the fee was really in the parents, though the destination bore only in liferent  
to them, and in fee to their children; but that this was not *ex necessitate*, as  
had sometimes been supposed, lest the fee should be *in pendente*. It was upon  
the presumed will of the granter, who only meant a *spes successionis* to be in  
the children; and, therefore, whenever there appeared to be intended a right of  
property in the children, the parent's right was either limited to a mere liferent,  
or considered as a trust fee, which could be defeated.

Reporter, Lord Braxfield.

Act. ———.

Alt. James Boswell.

*D**Fol. Dic. v. 2. p. 215. Fac. Col. No 56. p. 96.*

## S E C T. IX.

## Mutual Substitutions among Children.

1752. November 15.

ANDREW MACREADIE *against* The Executors of JAMES MACFADZEAN.

No 56.  
Found, that a  
mutual sub-  
stitution in a  
bond granted  
by a father to  
his two  
daughters,  
one of whom  
was married

JANET MACREADIE, in her contract of marriage with James Macfadzean, does,  
' with advice and consent of Provost Macreadie, her father, convey to her hus-  
' band all and sundry lands to which she has now right, and to which she may  
' hereafter succeed, in virtue of any deed made by her said father to her, or  
' to any other of his children.' And further, 'she makes her said husband and  
' his foresaids, her cessioners and assignees in and to all debts due to her, and