

No 22.

she should name in his lifetime ; he died without children, after he had made a nomination on death-bed. The eldest brother, who was debtor in the bond, raised reduction of the nomination *ex capite lecti*, as done to the prejudice of him as heir of conquest, at least as one of the heirs substitute in the bond.

*Alleged* for the defender ; That the clause to infest could not make the bond be reputed conquest, no infestment having followed ; *2do*, The act of Parliament anent the disposing in prejudice of heirs, ought to be understood of heirs general, not of heirs substitute, who might be otherwise strangers.

THE LORDS found, That a person on death-bed could not prejudge heirs substitute more than other heirs ; and found, that the pursuer was one of the substitutes, and that the nomination on death-bed was invalid ; and that therefore the whole brothers and sisters, and their children born, when *hereditas* was *delata*, came in as substitute, and *per capita* ; but that those born *post hereditatem delatam* by the death of George the creditor, were not to be reputed substitutes. But this last point was but overly reasoned. It was much debated that the brothers, &c. were not called substitutes in the bond, but only the creditor was by his faculty to determine the substitutes ; and so the brothers not nominate could not be looked on as heirs, and consequently could not quarrel *ex capite lecti*.

*Harcarse*, (LECTUS ÆGRITUDINIS.) No 649. p. 179.

No 23.

An assignation to moveables on death-bed was found valid, where the cedent had neither wife nor children to challenge it as done to their prejudice.

1683. March 15. SANDILANDS *against* SANDILANDS.

IN the competition betwixt Sandilands and Sandilands, it being *alleged*, That the pursuer's right was an assignation to a moveable bond upon death-bed, and so ought to be confirmed ;—it was *answered*, That albeit an assignation was granted upon death-bed, yet it was granted *admodum inter vivos*, and intimated before the granter's death, who was thereby denuded ; and that a moveable right, such as the bond assigned, was transmissible by an assignation and intimation upon death-bed.—THE LORDS found, That in this case, where the granter had neither wife nor children, who might pretend they were prejudged, that the assignation and intimation, albeit upon death-bed, did sufficiently denude and convey, without necessity of confirmation.

*Fol. Dic. v. 1. p. 212. P. Falconer, No 59. p. 39.*

No 24.

1683. March. MR JAMES HENDERSON *against* SAUGHTONHALL.

A BOND, heritable by bearing annualrent, is confirmable, and falls under executry, if the creditor die before the term of payment ; and sums lent out upon heritable security by a person *in lecto ægritudinis*, do not prejudge his relict and bairns.

*Fol. Dic. v. 1. p. 212. Harcarse, (EXECUTRY.) No 454. p. 124.*