

No. 11. 1687. *November 10.* SCHAW *against* FORBES of Skellitor.

A husband having become bound, in his contract of marriage, to add 2000 merks of his own to 1000 merks stipulated by the wife's father in name of tocher, and to employ the same to him and her in conjunct fee and life-rent, and to the heirs of the marriage, which failing, 1000 merks to belong to the wife and her heirs, the Lords found the wife and her heirs to be heirs of provision to the husband, and found, That the existence of an heir of the marriage, who died without children, did not exclude the substitution.

Fol. Dic. v. 2. p. 395. Harcarse.

* * This case is No. 43. p. 4381. *voce* FIAR ABSOLUTE, LIMITED.

No. 12. 1687. *December 8.* ALEXANDER HAMILTON *against* ANDREW WILSON.

A man being obliged to provide 400 merks to himself, and to the bairns to be procreated of the marriage, which failing, the one half to his heirs, and the other half to hers, to be divided at the time of the first of their deaths; the wife's heir pursued for her half.

Alleged for the defender: That the condition did not exist, in so far as there was a child procreated that survived the dissolution of the marriage two years, and was executor confirmed to his mother; *2do*, The time of dividing being at the dissolution of the marriage, the existence of the condition must be then considered.

Answered: The substitution of the wife's heir by the successory clause, "which failing," &c. imports *quandocunque deficiunt*, otherwise tailzies would be frequently evacuated.

The Lords, in respect of the specialty of the time of dividing, found the substitution did expire by the child's outliving the dissolution of the marriage.

Fol. Dic. v. 2. p. 396. Harcarse, (CONTRACTS OF MARRIAGE) No. 390. p. 102.

No. 13. 1697. *January 19.* LAWS *against* TOD.

A man, in his contract of marriage, obliging himself to take the securities of a sum of his own, and some lands he got with his wife *nomine dotis*, to himself and her in conjunct-fee, and to the children of the marriage, which failing, the money and land to be equally divided betwixt his and her heirs; it was found, that the substitution to the wife's heirs took place, though there was a child of the marriage served heir of provision, who afterwards deceased; and the clause, *quibus deficientibus* was to be understood *quandocunque defecerint*.

Fol. Dic. v. 2. p. 396. Fountainhall.

* * This case is No. 30. p. 4236. *voce* FIAR.