

nualrents, which she was to be allowed as a fund for the maintenance of her daughter; consequently she had no power concerning the principal sum, or any other power of a curator, as to the separate estate, if any had been, of her daughter; therefore, so far as concerned these, the daughter had no curator, and the assignation which she made to her mother alone was equally valid with the act of any other minor who has no curator at all. *2do*, It was valid in this other respect, That, though it was an assignation *inter vivos*, it was, in effect, a settlement of her succession, being so far of a testamentary nature, that it reserves a power to alter at any time.

No 18.

As to the objection against the effect of Katharine's testament, that the two sums were rendered heritable *destinatione* by the substitution, it was *answered*; That, supposing Jean must have been served to cognosce the failure of issue of her sister, it is another question, whether the bond, being personal in Katharine, might not be carried by her testament; for which Sir James Stewart, in his Answers to Dirleton's Doubts, p. 17. gives his opinion in the affirmative, where he says, 'That where a particular subject is transmitted, from which executors are excluded by the destination, the transmission may be by way of service, and yet the subject, if moveable, is still testable.' But, in this case, though there is no mention of executors of Katharine, there is mention of her assignees, and it is failing these, as well as her issue, that Jean is substituted; and therefore, as these have not failed, there is no place for Jean to claim, either by service, or as *nominatim* substitute in this assignation. *Lastly*, It is observable, that both these objects are founded merely upon the voluntary and gratuitous substitution of Jean, which could work no prejudice to her sister, who was creditor, by an anterior obligation, for the two bonds assigned to her.

THE LORDS found, that the assignation by William Craick, to Katharine his daughter, of the sums provided by her mother's contract to the said Katharine, and her heirs, and bairns, or her assignees; which failing, to Jean Craick, his daughter of a former marriage, did not limit or prejudice the power of Katharine to dispose of the subjects at her pleasure, even by voluntary or gratuitous deeds; and found, that she had effectually disposed of the same to Ann Napier her mother, by her assignation, reserving liberty to herself to alter at any time of her life; and also by her testament, whereby she nominated the said Ann Napier her executor and universal legatar; and therefore preferred the said Ann Napier.

C. Home, No 121. p. 193.

1791. GRÆME'S TRUSTEES *against* STEWART MONCRIEF'S TRUSTEES.

BARON STEWART MONCRIEF'S Trustees had purchased from the Trustees of General Græme the lands of Gorthy, for L. 26,000. It appeared General

No 19.

A power of redeeming an estate in favour of a

No 19.
third party,
failing heirs-
male of the
disponnee,
does not pre-
clude the dis-
ponnee from
selling.

Græm's right was burdened with a power of redemption, expressed in the following terms: ' In case of the death of the said General David Græme, without heirs-male of his own body, the lands, baronies, &c. are and shall be redeemable by Mungo Græme, second lawful son of the said deceast James Græme of Braco, or the heirs-male of his body, from the person succeeding to the said General David Græme, or the heirs-male of his body, or from any other of the substitutes, &c. by payment to the person so in possession, of the sum of L. 6 Scots money, upon any term of Whitsunday or Martinmas, the said Mungo Græme, or his heirs-male, shall think fit.'

There was no prohibition to contract debt, or sell, or alter the course of succession, but Moncrief's Trustees brought a suspension, to have it tried whether the person in the right of redemption, on the death of General Græme without heirs of his body, would have any claim.

The clause of redemption had been inserted for this reason ;—Mungo Græme, in whose favour the power of redemption was given, was the immediate younger brother of the General; but, at the time of executing the deed, it was not known whether or not he had died abroad. The right was given to him, failing the heirs, to whom, had he been certainly alive, he would have been substituted.

The General, however, had an irredeemable right to the estate. The disposition in his favour contained no prohibition to sell or alter the succession, therefore his Trustees possessed the entire right of disposal of it. It was accordingly so found; so that the purchasers were in perfect safety to pay the price.

Ordinary, *Stonfield.*

For Stewart's Trustees, *A Tod*, W. S. Agent.

For Græme's Trustees, *H. Corrie*, W. S. Agent.

SECT. IV.

Mutual Substitution among Children, how far it implies Limitations.

1684. *January.* WILLIAMSON and LITTLEJOHN *against* LITTLEJOHN.

No 20.
A bond of
provision was
granted to
children, with

IN the count and reckoning at the instance of Patrick Williamson, and — Littlejohn his spouse, against Andrew Littlejohn tailzior, No 44. p. 3858., the pursuer having craved the defender might be countable for 3000 merks that