

the following particulars, which are, his burial, paying his debts, &c.; then he goes on to bequeath certain legacies, after which follows this contraverted clause: 'Whatever money may be yet remaining, over and above the forementioned bequeathments, let it be put out upon provision, either here or in Scotland, as shall be thought most convenient, and the yearly provision of that money be given to my sister during her life, and after her death let the stock be divided equally amongst my brother's children.' The question occurred upon this, whether the money was to be split and divided among the children existing at the testator's death, to be taken up by their nearest of kin upon their decease, or if it fell only to be split and divided among the children existing at the life-renter's death, at which time the division is appointed to take place by the testament.—THE LORDS found, that only the children, who shall exist at the decease of the testator's sister, have right to the legacy in question, See APPENDIX.

No 62.

Fol. Dic. v. I. p. 303.

S E C T. VI.

Settlements importing a Liferent only.—Fiar's power of uplifting without consent of the Liferenter.

1677. November 16.

COBBS against WEMYSS.

ANDREW TORY a bastard having no children of his own body, disposes some tenements and sums to Wemyss of Fingask, under a back bond from Fingask, obliging him to re-dispone to Andrew and the heirs of his body allenary, and reserving the said Andrew's liferent. Thereafter Andrew makes a second right to this Cobbs, who pursues Fingask to denude and re-dispone. *Alledged*, the back bond implicitly excluded assignees as the word 'allenary' bore. THE LORDS found a bastard in his *leige poustie*, might lawfully prefer any to the King, and disporre his estate, and that the design here seemed to make the bastard a mere liferenter, in case he had no children, and therefore assoilzied.

Fol. Dic. v. I. p. 303. Fountainball, MS.

No 63.

A bastard having no children, dis-
posed his estate under a
backbond obliging the
disponee to re-dispone to
him and the heirs of his
body, reserv-
ing his life-
rent. Found
that the effect
was to make
the bastard a
mere liferent-
er, if he had
no children.

1680. January 21.

CADDEL against REATH.

By contract of marriage betwixt Alexander Reath and Isobel Caddel, John Reath is obliged to pay 3000 merks to the said Alexander his son, and his future spouse, to be employed by them, by advice of their parents, to them in

No 64.

A sum being
payable by
contract of
marriage to
husband and