

No. 258.

leave to whom he pleased the 5000 merks, and it is like he hath left it to his other daughters, and the bond may be made use of to overturn his whole intent, and alter the tailzie.

The Lords found, that seeing the first disposition contained a dispensation with delivery, and the rest being accessory thereto, and only altering in some things the tailzie, but still to the first heir of tailzie, being the son of Inglistoun's marriage, they ordained them all to be delivered up, and the bond also, but with this declaration, that the provision anent the 5000 merks in the first disposition, should be holden as repeated in the rest, that the heirs of line might be in no worse case than by the first, and that the bond should only be made use of according to the substitutions, and clausés of the tailzies.

Stair, v. 1. p. 643.

1675. June 23.

BRUCE *against* BRUCE.

No. 259.

An heritable bond by one to his nephew found effectual, though never delivered, sasine having been given thereupon, which was in the public register, whereby there was *jus quasitum* to the nephew.

Stair. Dirleton.

* * * This case is No. 365. p. 11185. *voce* PRESCRIPTION.

1677. July 26.

STEVENSON *against* STEVENSON and her HUSBAND.

No. 260.

A disposition of tailzie latent and incomplete, lying by the maker at his death, was found effectual, though neither delivered, nor containing a clause dispensing with the not-delivery.

Umquhile John Stevenson of that ilk, by his contract of a marriage, provided his estate to his heirs-male of the marriage, and failzieing heirs-male, provides 5000 merks to the heirs-female; but there being no heirs-male of the marriage, he disposed his estate to his eldest daughter Margaret Stevenson, she always marrying one of the name of Stevenson, or who would assume the name of Stevenson, wherein if she failzied, that she should lose her right, to belong to Janet the second daughter; and if she failzied, to the third daughter. Margaret the eldest daughter marries George Moorhead. Janet the second daughter pursues Margaret and her husband, for declaring that Margaret had lost her right, her husband having not assumed the name of Stevenson, and that therefore Janet had right to the estate in the terms of tailzie. The defender alleged, that this disposition of tailzie was a latent and incomplete right, that took no effect, and that it was never delivered, nor did it contain a clause dispensing with delivery, and so was passed from by the father, who lived three or four years thereafter. *2do*, This disposition can have no effect against Margaret, because she neither did, nor was