

No 7.

nation, the pursuer's father was denied of all right to the contract of marriage, which must stand good; and it could be of no import, in point of right, whether the new obligation became, in all its parts, effectual or not; and no regrefs was competent to the cedent.

THE LORDS found, That it was not competent to the defender to propone on the assignation granted to his father, without acknowledging the passive titles.

No 8.

A person was bound, by contract of marriage, to convey his estate to the heir of the marriage. He conveyed to his eldest son; but inserted a clause, empowering himself to alter at pleasure. The son was infest, and died; the father exercised his reserved power after his death, and conveyed to his second son. The eldest son's widow claimed terce. Found the might plead upon her husband's infestment; and yet impugn the reservation contained in it as gratuitous, and in prejudice of the contract of marriage.

Reporter, *Lord Cullen.*A&C. *Archibald Stewart, jun.*
Clerk, *Dalrymple.*Alt. *Alex. Hay.**Fol. Dic. v. 3. p. 33. Edgar, p. 169.*1731. *January 26.*FEA *against TRAIL.*

A PERSON, whose estate in his contract of marriage was provided to the heirs of the marriage, did thereafter, in implement of the contract, dispone his estate to his eldest son; but reserving to himself a power to alter at his pleasure. The eldest son having died infest, and his relict claiming a terce, it was objected by a second son of the marriage, to whom the father, in virtue of the reservation, had gratuitously disponed the estate after the eldest son's death: That the eldest son's infestment, upon which the pursuer's claim was founded, was evacuated by the conveyance in his favours; and that if the pursuer did plead upon her husband's right, she must take it as it stands.

Answered, The reservation must be held *pro non adjecta*, being repugnant to the limitation in the contract of marriage; and the pursuer's husband had never accepted of the disposition to tie him down to the unreasonable condition.

THE LORDS found the pursuer might plead upon her husband's infestment, and yet impugn the reservation therein contained, as being gratuitous, and in prejudice of the contract of marriage.

*Fol. Dic. v. 1. p. 48.*1740. *January 16.*JOHN M'KEAN *against* ELSPETH RUSSELL.

No 9.

A creditor, in a bond to himself in life, and certain substitutes in fee, exercised, on death-bed, a reserved power to uplift without their consent.

JAMES M'KEAN being creditor to Sir Harry Innes, in a bond for 2000 merks, payable to himself, if in life, and, after his decease, to certain other persons; containing a power to James, at any time in his life, to uplift, receive, and discharge the same, without consent of the persons whose names were therein-mentioned, did, on death-bed, exercise this faculty, and gave it away, not only from the heirs at law, but likewise from the substitutes.

In a reduction, on the head of death-bed, it was pleaded for the heir at law, That the death-bed deed did evacuate the substitution, whereby there came to be place