claration signed by the said Mr. Andrew, bearing, a relation of the said reservation, and by virtue thereof, declaring "the disposition to be null and void, and ordaining his heirs of line to succeed as God and Nature hath ordained." The defender alleged that the reason is not relevant, because the declaration is not conform to the power reserved, being only "to alienate or wadset;" and if need be, it is offered to be proved, that after that declaration he continued in his first resolution, and did express the same; neither was this declaration ever delivered, but is suspect, and if true, was lying by the defunct. It was answered, That albeit such clauses in onerous contracts are strictly to be observed, yet this is a gratuitous disposition, and conditional, "failing heirs of his own body," and bearing "a power to alter on death-bed," so is of a testamentary nature, and therefore most favourable and amply to be extended according to the true intent, which is a power to alter; for the constitution of an annual-rent, or burdening with money, would be effectual, albeit not in the specific terms; and the words, "ordaining the heirs of line to succeed," is a dispositive word; but however, any alteration in whatever terms expressed, is sufficient.

No. 262. formerly executed, containing a power to alter, was to be null, found effectual without delivery.

The Lords found the power reserved, validly executed by the declaration produced, and therefore reduced the disposition, and found the declaration effectual, though not delivered, seeing the power to alter *in articulo mortis*, and in favours of the heirs of line, did necessarily import that there was no necessity to deliver the writ, making the alteration in the disponer's life.

Stair, v. 2. p. 731.

1683. *March.* A. *against* B.

No. 263.

One having granted a disposition of some goods, without an onerous cause, containing warrandice from fact and deed, and dispensation with the not-delivery; and thereafter disponed some of the same goods to another; in a competition, it was alleged for the receiver of the first disposition, That the disponer could not take away his *jus quæsitum* thereby.

Answered: The first disposition was never delivered, and the clause dispensing with the not-delivery, could not hinder the disponer to alter or innovate at his pleasure, though there was no such reserved faculty; all the use of a dispensing clause being only to hinder heirs or executors to quarrel the deed for want of delivery, which the disponer altered not before his death.

The Lords preferred the second disposition, in respect of the answer.

Harcarse, No. 134. p. 27.