

No 48.

A husband disposed to his second wife an annualrent out of his lands, and to the children of that marriage in fee. He afterwards sold the lands, and a son of that marriage, as fiar, competing with the purchaser, the Lords found the sale effectual.

1630. July 9.

VEITCH against ROBERTSON.

AN husband giving infestment to his second wife in liferent, and to the heirs to be begotten of that marriage, of an annualrent out of his lands, which lands the husband thereafter disposed, divers years after the procreation of a son in that marriage, and which son of the said second marriage being served heir of that marriage, and infest in that annualrent, disposes the same to another, who pursues pointing of the ground therefor against the heritor of the land, who had acquired the right from the father, as said is, after the said sasine of the annualrent, and whereby he *alleged*, that the pursuer nor his author, as being the heir of that marriage, had no right to the said annualrent, the father remaining still fiar, who disposed the land, and which disposition absorbed the said annualrent; and the pursuer *answering*, That after there was sasine given to the wife in liferent, and to the heirs of that marriage in fee, of the annualrent libelled, the bairns of that marriage became fiars thereof, how soon they were born; so that thereafter, albeit the father remained fiar of the heritable right of the lands, yet his right was affected with the burden of that annualrent, so that the father could never thereafter valuably dispoise the heritable right of the lands, but with the burden foresaid, and wherewith the said disposition behoved to remain affected, even as if his eldest son of the first marriage, who was universal heir, if the said disposition had not been made by the father, as said is, would have succeeded to the right of the lands, but ever with the said burden; even so must the said disposition be affected therewith.—THE LORDS found the disposition made by the father sufficient to exclude this pursuit, and that the fee of the said annualrent subsisted in the father's person, notwithstanding of the sasine given to the wife, and heirs of that marriage, and consequently that the father's disposition of the land was not affected with the burden thereof; so that albeit the heir might have been compelled to warrant that annualrent personally as heir, yet it was not alike in a singular successor to affect the ground against him.

Act. Stuart.

Alt. Advocatus & Taylor,

Clerk, Gibson.

Fol. Dic. v. 1. p. 302. Durie, p. 528.

1663. January.

LAIRD of DAIRSEY against HAY.

No 49.

An heritable bond to a man and his wife in liferent, and to the children of the marriage in fee,

SIR GEORGE MORISON of Dairsey gives a bond to umquhile John Bell and Margaret Hay his spouse in liferent, and to the children of the marriage in fee, for L. 1000, whereupon infestment follows. Margaret, with consent of her children, and their curators, pursues for payment. It was *alleged*, That the relict is only liferenter, and the bairns not infest, so that a renunciation cannot be