

1663. *January 16.* CAMPBELL *against* The LADY KILCHATTAN.

No 4.

*In favorem* of a relict's infestment upon her contract of marriage, for her liferent-right, a base infestment to be holden of the superior not confirmed, is sufficient against a singular successor publicly infest.

IN the process, (No 35. p. 1302.) pursued by Major Campbell, compeared Hugh Hamilton, bailie of Edinburgh, and *alleged*, That he ought to be preferred, because he comprised against Kilchattan; and upon his comprising is infest, holding of the King as superior, before the Major's confirmation. It was *answered*, That Kilchattan being only infest by a base infestment, to be holden of the superior, and not confirmed, the comprising could comprise no more but the personal right standing in Kilchattan's person, the infestment being in-valid till confirmation; and the infestment upon the comprising signifies nothing till Kilchattan's infestment be confirmed; and therefore the Major's infestment of annualrent being anterior to the comprising, the subsequent confirmation makes the infestment preferable.

THE LORDS repelled the allegiance. *In presentia.* See No 11. p. 3016.

*Fol. Dic. v. 1. p. 193. Gilmour, No 62. p. 47.*

1713. *July 10.*

JAMES DOUGLASS of Hisleside *against* WILLIAM SOMERVEL of Kennocks.

No 5.

A party served heir in general to the receiver of a disposition (who died infest *a me* without the superior's confirmation), renounced and discharged the disposition. The Lords found, the whole right in the defunct's person was conveyed by the general service to the heir, and the heir's discharge and renunciation were found to be a mid impediment, and effectual stop to any subsequent confirmation of the infestment *a me*, to his

MR WILLIAM SOMERVEL having disposed the lands of Kennocks and Blantaggart to James Stuart son to Mr William Stuart of Hisleside, who was infest in the year 1670; Grissel Stuart spouse to Samuel Douglass of Hisleside, in the year 1683, after having been served heir in general to James Stuart her brother, did with her husband subscribe a discharge and renunciation in favours of William Somervel, of all right in their persons by virtue of any disposition or other right or title they could pretend to the lands of Kennocks. After the decease of Grissel Stuart, James Douglass now of Hisleside her son, served heir in special to James Stuart his uncle, as the person last vest and seased in these lands of Kennocks, and commenced a proving the tenor of the said disposition and infestment, which were abstracted and amissing.

William Somervel *objected*, That the pursuer had no right to prove the tenor, because, 1. His special service is intrinsically null, as proceeding upon an infestment *a me* not confirmed by the superior at the time of the service, which infestment was null, or at most but a preparatory step in order to establish a right whenever a confirmation should be obtained; so that there was no subject for a service, that is no feu, which could not be constituted by a null, or at most a conditional infestment: And though the ordinary way of annulling services be by a great inquest, yet the Lords sustain reductions of services before themselves where the nullities are obvious. Nor can a confirmation lately impetrated by the pursuer, validate the service expedite before there was a right in being, to which James Douglas could be served, suppose it might make way for