

intented, or depending, craving sequestration; and albeit also the Earl and Johnston of Corehead *alleged*, There was no reason to grant the same, seeing they were in possession of the land by a great part thereof in mansing, and the rest by uplifting the duties thereof from the tenants; likeas, the Lord Johnston nor the apparent heir had any real right, which might be the ground of the sequestration; notwithstanding whereof, the sequestration was ordained for such duties as was not uplifted already, and in time coming, ay and while the process ended, so far as concerned the lands set to tenants, but not for the Mains possessed in mansing by Corehead; Also, the LORDS sustained the confirmation foresaid of the said public infestment, although done after the granter's decease; which infestment and confirmation thereof were found valid, done at any time whatsoever the superior pleased, either before or after the disponder's decease, at any time, where there was no intervening impediment of any other more lawful right, made by the disponder before the confirmation, really of the saids lands; in which case, if any such real right had been lawfully perfected before the confirmation, there might have been argument, that the confirmation might have been controverted, as not valid, after the decease of the disponder, as that thereby *confirmatio et confirmatum non possent conjungi post mortem, propter illud medium impedimentum.*

No 14.

Act. *Stuart et Cunninghame.* . . . Alt. *Advocatus et Nicolson.* . . . Clerk, *Scot.* . . .
Fol. Dic. v. I. p. 193. Durie, p. 727.

1663. *January 16.* TENANTS OF KILCHATTAN *against* LADY KILCHATTAN.

A CONJUNCT infestment granted to man and wife, to be holden of the crown, being null for want of confirmation, it was *argued* for the wife, that her interest needed no confirmation resolving into a liferent, which is but a personal servitude, which was repelled.

No 15.

Fol. Dic. v. I. p. 194. Stair.

* * * See The particulars of this case, *voce* BASE INFESTMENT, No I. p. 1259.

1669. *July 23.* JAMES GRAY *against* MARGARET KER.

JAMES GRAY having appraised certain lands, and having charged the superior, pursues for mails and duties. Compearance is made for Margaret Ker, who produces her infestment granted by her husband, the common author, prior to the appraising, and craves to be preferred. The pursuer *answered*, That her infestment being granted by her husband, to be holden of the superior, not confirmed, is null. To the which it was *answered*, That an infestment of a liferent,

No 16.
 Found as
 above.

No 16. granted to a wife in implement of her contract of marriage, is valid, though not confirmed.

THE LORDS repelled the allegiance, and found the relict's infestment null, and not sufficient to defend her possession.

Fol. Dic. v. 1. p. 194. Stair, v. 1. p. 643.

1760. December 11.

JOHN GRIEVE, servant to Dr George Grieve, physician in Peebles, *against*
JOHN WILLIAMSON, Cordiner in Peebles.

No 17.

Where a disposition is granted to one, and the heirs-male of his body, a charter granted by the superior, without resignation, confirming the disposition to the disponee in liferent, and to his son in fee, with infestment following thereon, will not constitute the son fiar.

JAMES WILLIAMSON of Cardrona, by disposition, anno 1706, for love and favour, and other causes, disposed to Mr John Williamson, school-master in Peebles, and the heirs-male of his body, or the heirs-male of the descendants of his body, which failing, to return to the granter's heirs, certain burghage tenements in the burgh of Peebles, and five acres of land in its neighbourhood, holding feu of the Earl of Traquair.

These five acres were neither resigned in terms of the procuratory, nor was infestment taken in virtue of the precept of sasine; but in 1709, a charter was granted by the Earl of Traquair, the superior, which confirms the disposition by Cardrona, *in omnibus capitibus et singulis clausulis, &c. secundum formam et tenorem ejus in omnibus punctis*. At the same time, this confirmation is not granted to Mr John Williamson, as sole fiar, in terms of Cardrona's conveyance, but thus: *Prædict. Magistro Joanni Williamson, in vitali reditu, et Jacobo Williamson ejus filio, in feodo*. Immediately after this, there is a clause of *novodamus* in the same terms; and the charter concludes with a precept of sasine for infesting the father in liferent, and the son in fee.

Upon this charter, infestment soon followed; and the sasine bears delivery to have been made to the father and son personally; and that the father, *pro semet ipso, et in nomine ejus filii, instrumentum petiit, &c.*

From this time, down to the 1735, Mr John Williamson, the father, continued to possess as fiar; and, in that character, granted infestments of annual-rent out of the lands. But the eldest son, James, having then died, John Grieve, one of his personal creditors, brought a process against John, the second son, as lawfully charged to enter heir to his deceased brother; and, upon John's renunciation, obtained a decret *cognitionis causa*, of date the 9th of January 1736; and thereafter proceeded to lead an adjudication.

Upon this, Mr John Williamson, the father, executed a disposition in favour of his son John, reserving his own liferent, and containing a substitution and return in conformity with Cardrona's disposition, and assigning him to the unexecuted procuratory, and precept therein contained; but soon thereafter, he was himself infest upon the said precept, and appeared for his interest in the