

nuary 1674; though the word in that case was *issue*, and is of a more general signification than the word *children*; for it extends *etiam ad nepotes aliosque posteros*.

No 9.

*Fountainball, v. I. p. 102.*

1681. November 29.

The LADY KINCARDINE *against* The EARL'S REAL CREDITORS by infestment.

THE Earl of Kincardine having granted a bond for implement of his contract of marriage, for securing of 80,000 gilders on land in favours of his Lady, in case of no children of the marriage, or of their dying before the age of 20, so as they might and did dispose of the same; with a resolute clause making void the infestment, in case of the children's attaining to that age.

No 10.

'THE LORDS found, That the provision irritating the infestment was to be strictly interpreted, and that it took effect by any of the children's attaining to the age of twenty, though they did not dispose of the sum;' and would not supply the words, *so as they may and do dispose*, as an omission, although they were mentioned in the narrative and procuratory and requisition, and the charter; 'and found, That the infestment was not a fiduciary security to the children, but only a security to the Lady of her right in the foresaid event.'

*Fol. Dic. v. I. p. 188. Harcarse, (INFESTMENT.) No 583. p. 162.*

1686. December 7.

DEACON THOMAS SOMERVILLE *against* CAPTAIN WILLIAM TENANT.

IN the action pursued by Deacon Thomas Somerville taylor in Edinburgh, for the behoof of Somerville of Drum, against Captain William Tenant, skipper in Kirkcaldy, for declaring the disposition granted to him by Tenant of Cairns was altered and revoked by him on death-bed, conform to his faculty, and a new one ordained to be drawn, and he died before that was got done and subscribed; and it being *answered*, That he made no alteration as to Captain Tenant's succeeding him, but only ordained the tailzie to be rectified, that it should only belong to the heirs-male of the substitutes; the LORDS, before answer, allowed a mutual probation on the matter of fact alleged *hinc inde*; and Captain Tenant adducing John Paterson the writer whom Cairns entrusted with the renewing the disposition, Drum gave in sundry objections against him, viz. that he had voluntarily given up the disposition to the Captain, and had instigated him to this plea, and joined with him at consultations, and carried himself

No 11.

Lands were tailzied to heirs-male, with a clause in favour of daughters, *in case there be no heirs-male*. There was an heir-male, but he died before the daughters, and the King succeeded as *ultimus hæres*. The provision to the daughters found to have failed.