

No 10. justly reputed superior to all, when another cannot be shown.—THE LORDS repelled this allegiance, proponed for the King's donatar, and found the right of this liferent pertained to Craigivar, whom they found to be superior to this rebel, by this reservation contained in the charter granted by the father to his son, to be holden of the superior, and confirmed by him ; which reservation so made, and charter which bears the same, being confirmed, they sustained as sufficient to make him his vassal, although the rebel had right to the liferent of before, and found the superior's right not prejudged, albeit before his confirmation the liferenter was rebel some days before, and that thereby no right was acquired to the King, the superior having confirmed long before the year expired, and within a month after the date of the charter granted to the son, and so the superior was preferred to the King, and the sole reservation found enough to make him vassal.

Act. *Advocatus & Nicolson.* Alt. *Stuart & Gibson.* Clerk, *Scot.*
Fol. Dic. v. 1. p. 193. Durie, p. 782.

1663. *January 15.* CAMPBELL *against* LADY KILCHATTON.

No 11.

FOUND, that a creditor confirming his author's base infeftment *ad hunc effectum* allenarly, to make his own valid, confirms the relict's infeftment also, which was *in eodem corpore juris.*

Fol. Dic. v. 1. p. 193.

*** See The particulars of this case, No 35. p. 1302. and No 4. p. 3008.

1685. *March 17.* COLONEL MAINE *against* LADY EARLSTON.

No 12.

A PARTY before his committing perduellion, having resigned his estate in favour of himself in liferent, and his son in fee, adding this general clause, 'with and under the conditions and provisions contained in the procuratory of resignation ;' and having, in that procuratory, expressly reserved his Lady's liferent infeftment, the LORDS, in a competition betwixt her and the donatar of the forfeiture of her husband, found, That though the reservation in the public infeftment was in general terms, yet the Lady's liferent being particularly reserved in the procuratory of resignation, to which the general clause related, was equivalent to a confirmation ; and therefore preferred the Lady to the donatar.

Fol. Dic. v. 1. p. 193.

*** See The particulars of this case by Fountainhall, *voce* BASE INFESTMENT, No 39. p. 1308.

* * * Sir Patrick Home reports the same case, dating it in March 1684.

No 12.

COLONEL MAINE having obtained the gift of forfeiture from the King, of Earlstoun estate, and having pursued for mails and duties; there being com-
 pearance made for the Lady Earlstoun, who craved to be preferred to the rents
 of her jointure lands, by virtue of her infeftment being clad with possession be-
 fore the crime was committed for which her husband was forfeit, her husband's
 possession, *fictione juris*, being her possession;—*Answered*, That a base infeft-
 ment cannot secure against a forfeiture, unless the same had been confirmed by
 the King superior, or that the Lady had been publicly infeft upon her hus-
 band's father's resignation, who was the granter of the liferent right, as was
 decided November 1682, Dalzell against Caldwell, *voce* SUPERIOR and VASSAL.
 —*Replied*, That the right was confirmed, in so far as by an infeftment under
 the Great Seal, proceeding upon the Lady's husband's resignation in favours of
 himself in liferent, and his son in fee, the Lady's liferent is reserved, which
 resignation is equivalent to a confirmation; seeing a liferent right may be con-
 stituted by a reservation.—*Duplied*, That the said infeftment does not bear a
 reservation of the Lady's liferent in particular, but only in general terms,
 with and under the conditions and provisions contained in the procuratory of
 resignation; and albeit the Lady's liferent be reserved by a provision in the pro-
 curatory of resignation; yet, unless it had been expressed in the infeftments
 following thereupon, it cannot be sustained against the donatar, who is a singu-
 lar successor.—*Triplid*, That the general clause (under and with the condi-
 tions and provisions, restrictions and reservations,) contained in the procuratory
 of resignation, being insert in the infeftment under the Great Seal, and the Lady's
 liferent being particularly reserved by a provision in the procuratory of resignation;
 it is equivalent as if it had been particularly exprest and reserved in the infeft-
 ment; seeing a general relative clause in the infeftment doth comprehend all par-
 ticulars to which that general clause relates, and is equivalent as if it had been par-
 ticularly ingrosted and repeated in the infeftment. And the decision in the cause
 of General Dalzell against Lady Caldwell does not meet this case; the Lady
 Caldwell having only a base infeftment, and there was no public infeftment
 granted by the superior reserving her right.—THE LORDS found, That the re-
 servation in the public infeftment, albeit in general terms, yet the Lady's life-
 rent being particularly reserved in the procuratory of resignation, to which the
 general clause related, was equivalent to a confirmation; and therefore prefer-
 red the Lady to the donatar.

Sir P. Home, v. 1. No 603.