

because they themselves being superiors, could not give a precept of sasine for infesting themselves. The Lords having considered the desire of the bill, after a long debate went the way how they might be validly infest, as likewise two practices deduced, whereby the like was ordained in favours of a prebend of church lands, No 33. p. 6917, and in favours of the Earl Bothwell, who was a Lord of erection, which they found not to quadrate with this case; as likewise, that the said sisters might come to a valid infestment by granting bond, whereupon an adjudication might be recovered, and so infestment gotten in name of a third person; they at last did grant the desire of the bill, but ordained the precept to bear *salvo jure cuiuslibet*.

No 34.

*Gosford, MS. No 54. p. 19.*

1740. February 22. LORD BRAGO *against* The MAGISTRATES of BANFF.

No 35.

THE LORDS hesitated how far they could give warrant for a summary charge of horning against the Magistrates, to receive a singular successor for their vassal, upon a disposition and resignation *in favorem*, though such warrant be constantly granted to receive heirs and adjudgers in case of the Magistrates' refusal; and superseded till precedents should be looked for.

Nor was the point after all determined; for, upon the second application, containing such precedents as could be found, the fact appearing to be, that the Magistrates had actually received the resignation, but refused to allow the clerk to make out the instrument, upon a dispute that had arisen, Whether the *reddendo* should be conceived in terms of the more antient charters, or in terms of a later charter of adjudication? THE LORDS had no difficulty to find, that where the burgh had accepted of a resignation, there lay a summary remedy to oblige them to grant a charter; and granted warrant for letters of horning against the Magistrates, to receive the petitioner in terms of the antient investitures, which were particularly described in the interlocutor.

*Fol. Dic. v. 1. p. 471. Kilkerran, (SUPERIOR AND VASSAL.) No 3. p. 528.*

1742. June 23. WALLACE *against* DALRYMPLE.

WHERE an heritable bond bore an obligation to infest in an yearly annualrent out of particular lands, and forth of all other lands belonging to the granter, and lying within the shire of Ayr, as the same are enumerated in the granter's infestments, with a precept of sasine in the same precise terms, whereon the notary extended a sasine, in which he comprehended other lands as contained in the granter's infestments than those particularly mentioned in the heritable bond and precept, but without expressing any such infestments to have been produced to him; the LORDS " Found the sasine null as to all the lands

No 36.