

lands and rents, it is all one; and was so found, 23d July 1667, Hume *contra* Hume of Kello, No 26. p. 1295.—THE LORDS found Balbedy's right sufficiently clad with possession by the discharge produced.

Fol. Dic. v. 1. p. 89. Fountainball, v. 1. p. 713.

No 30.

S E C T. VI.

A Wife's right of Liferent, held Base of her Husband, is supported by the Possession of the Husband.

1622. March 8. LA. CORSINDAY *against* TENANTS.

THE goodwife of Corsinday being infeft by her husband in liferent of some lands to be holden of her husband after his decease, pursues the tenants for mails and duties thereof; wherein appeared for his interest, James Garioch of Kin-stair, who was infeft in the same lands upon a comprising, deduced at his instance against the Laird of Corsinday, her husband, for a debt owing by him, and who, by virtue of the said comprising and infeftment, was in possession of the said lands seven years before Corsinday's decease; and in respect thereof *alleged*, That the Lady could not be found to have right to claim the said duties, especially seeing that the excipient's infeftment was public, granted to be holden of the superior, and clad with the possession, and the pursuer's sasine was but base, given by the husband *stante matrimonio*. Which allegiance the Lords repelled, and preferred the pursuer upon her sasine, because she same was given in recompence of some other lands wherein she was infeft, by virtue of her contract of marriage; which lands, so provided to her, she had renounced to her husband, so that the lands libelled being given to her in place of other lands, whereof she had renounced her right, they behoved to be in that same case as if she had been provided thereto, and infeft therein by virtue of her contract of marriage; and therefore sustained her right thereof, albeit base, and preferred the same to the public right and possession of the compriser; albeit the compriser duplied, that he ought to have been preferred in that possessory judgment, by reason foresaid, of his public infeftment, holden of the superior, clad with possession, and of the baseness of the pursuer's sasine, which he alleged could not be found to depend upon a contract of marriage, as coming in place of the lands therein contained, which she had renounced; seeing that renunciation was her own voluntary deed, and that none of the leiges could have been prejudged by that base sasine, or put in *mala fide* to have bought the lands from her husband, far less could it hurt a compriser *ex causa necessaria*; which allegiance was repelled,

No 31.

A lady was infeft by her husband, to be holden of himself for her liferent after his decease. Seven years before his death, a compriser, infeft to be holden of the superior, obtained possession. The lady had renounced other lands, to which she had right by her contract of marriage, and had obtained the above infeftment in lieu of them. She was preferred to the compriser.

No 31.

as said is. Likeas, before the proponing of this exception, the tenants alleging that they were tenants to the said appriſer, to whom they had paid their mails, and he not being ſummoned, no proceſs ought to granted; this was alſo repelled, and therefore he compeared for his intereſt *ut ſupra*. The like to this deciſion, *in terminis*, was done in Huttonhall againſt Touch, No 34. p. 1301.

Att. Lawrie. ———— Alt. ———— Clerk, Gibſon.

Fol. Dic. v. 1. p. 89. Durie, p. 19.

1622. March 23. MURRAY of Lochmaben *againſt* Scot of Harden.

No 32.

A lady infeſt baſe by her husband, for her liſerent, was *in mora* after his death, and did not take ſteps to attain poſſeſſion. She was confequently excluded in a competition. See No 41. p. 1309.

In a decreet arbitral betwixt Scot of Bonnitoun and Scot of Haining; Scot of Bonnitoun and his heirs are decerned to have three chalders of victual yearly and perpetually out of certain lands pertaining to Haining; which being bruiked, conform to the decreet, and uplifted by Bonnitoun, and alſo by his heir after his deceaſe, the heir thereafter remaining year and day at the horn, John Murray of Lochmaben, as donatar to his liſerent, purſues for that yearly duty during the rebel's lifetime; againſt which Scot of Harden, donatar to the ſingle eſcheat of this ſame heir, *alleged* the ſame belonged to him by the ſingle eſcheat, in reſpect the decreet arbitral fell under the ſingle eſcheat; and albeit thereby the victual was ordained to be paid to the heir yearly thereafter perpetually, yet that could not cauſe it pertain to the donatar to the liſerent, ſeeing it was neither a liſerent right to the ſaid heir, nor an heritable right, and had no holding, nor no lawful ſecurity perfected thereupon; without the which, it could not fall under a liſerent eſcheat, but behoved to pertain to him by virtue of his ſingle eſcheat acquired long before this donatar's right: Which allegiance the LORDS repelled, and found no more fell under the ſingle eſcheat, but ſo many years bygone as were owing the time of the giving of the ſaid ſingle gift, and that all the reſt fell under the liſerent.

In this ſame proceſs, the relict of Scot of Haining having compeared and alleged that her husband, (out of whoſe lands, the foreſaid yearly duty of three chalders victual was appointed to be paid by the ſaid decreet arbitral,) had by charter and ſafine infeſt her in the ſaid lands, before the date of the ſaid decreet, during her lifetime; ſo that the ſaid decreet being after her right, and ſhe not being a ſubmitter nor conſenter to the decreet, the donatar, nor the rebel's ſelf, could have no duty out of the foreſaid lands during her lifetime. This allegiance the LORDS repelled, becauſe the donatar offered to prove by reply, that the charter and ſafine were but baſe, given by the husband to the wife. Likeas Scot of Bonnitoun, during his lifetime, and after his deceaſe, his heir the rebel, whoſe liſerent was craved, remained in poſſeſſion, not only during the lifetime of the relict's husband, but alſo diſerſe years after his deceaſe; the relict doing no lawful deed to recover poſſeſſion by virtue of her right, nor quarrelling the rebel's