

No 13.

THE LORDS preferred the Lady's annuity to the real rights of the competing creditors completed before her confirmation, in respect her sasine was supported by her contract of marriage, providing her to that annuity, and bearing precept of sasine in the lands affected therewith, and by forty years possession, albeit a charter *de me* be not produced. For the LORDS considered that the sasine referred only to a charter in general, and that it was then the custom to grant charters *a me* and *de me*, and to take infeftment upon both at the same time; and that it is a presumption and not a fiction of law, that a charter *de me* intervened.

*Forbes, p. 270.*

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SECT. IV.

Confirmation may be granted *quandocunque*.—What rights require Confirmation.

1634. July 17.

LO. JOHNSTON *against* E. QUEENSBERRY and JOHNSTON of Corehead.

No 14.

Confirmation was found valid, being granted at any time, either before or after the disponent's or disponee's decease, providing there was no intervening impediment of any other more lawful right made by the disponent before confirmation.

IN a double pointing for the mails and duties of the lands of Lochouse, claimed by the Lo. Johnston, as having right from the apparent heir of umquhile Captain Johnston of Lochouse, heritor of these lands, and who was in possession thereof at his decease, on the one part, and of the Earl of Queensberry, as being heir to the Lord Drumlanrig, his father, who was heritably infeft therein by disposition of the said umquhile Captain, by two infeftments, one base, and another holding of the superior; which infeftment to be holden of the superior, was confirmed by this Lord Queensberry, who had acquired the heritable right of the said superiority from the L. Calderwood, of whom the saids lands were holden; which confirmation was granted after decease of Captain Johnston, granter of the infeftment, and after the decease of the Lord Drumlanrig also, to whom the infeftment was granted. In this process, the LORDS appointed that there should be a sequestration of the duties of these lands in an indifferent responsible gentleman's hands, who, during the dependence of this action, should uplift the same from the tenants, and make payment thereof to the party, who should be found to have right thereto, at the end of the process: Which sequestration was so appointed, albeit it was only verbally sought at the bar by the Lord Johnston, the time of the disputing of this cause, and that the summons craved no such sequestration, neither was there any summons or action

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 disponent's decease, at any time, where there was no intervening impediment of any other more lawful right, made by the disponent 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 disponent, 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. 1. 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. 1. p. 194. Stair.*

\* \* \* See The particulars of this case, *voce* BASE INFESTMENT, No 1. 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.