

No 5. in case the Lady should make her election, to pay 6000 merks yearly, at two terms in the year, at her own dwelling-house; she having declared her election, did pursue the Earl her son for the said 6000 merks, for bygones and in time coming. It was *alleged* for the defender, that he ought to have deduction of cess and taxation, which was prior to the contract of marriage, and of all public burdens for the militia. It was *replied*, that conjunct fee lands, bearing an obligation to be worth of free rent 6000 merks; and the said sum of money, in case of her election, which she now hath declared, being to be paid her entire, without any burden, it cannot be subject to cess or any other public burden.

THE LORDS having considered the conception of the contract, which did not mention public burdens, but did bear only free rent, which had respect to the lands whereof the teinds did not belong to the Earl of Cassilis, at least the Lady was only provided to the stock, they found that she was liable to cess conform to act of Parliament 1646, anent liferenters; but declared her free of all taxations prior to the contract of marriage. And as to the burden of the militia, they did likewise declare her free; albeit there was no reason, but as a liferenter, she should be liable in these as well as cess. But, in respect of the clause of the contract, which was conceived as said is, it was carried by plurality of votes, that she should be free of the burden of the militia.

*Fol. Dic. v. 1. p. 144. Gosford, MS. p. 110.*

No 6.

A party being bound to obtain himself *validly and sufficiently infest*, the Lords found this imported a public infestment.

1678. July 18. JA. BUCHAN of Ockhorne *against* MARJORY JAMIESON.

ONE being obliged by minute to infest in lands, the LORDS found it behoved to be a public infestment, a base not securing against feudal delicts, and the mediate superior.

*Fol. Dic. v. 1. p. 144. Fountainball, MS.*

1682. March.

BUCHAN *against* JAMIESON.

No 7.

Found in conformity with the above.

MARJORY JAMIESON, relict of the deceased Mr John Alexander, advocate, by contract betwixt her and Andrew Alexander, being obliged to obtain herself infest in the lands of Artbothic, validly and sufficiently, and being infest, to dispoise the same in favours of Andrew Alexander her husband's brother; and which contract being assigned to James Buchan, and he having charged the said Marjory Jamieson, she suspended upon this reason, that she was already infest, in which case the LORDS found, that the suspender being obliged to obtain herself infest did import a public infestment.

*Fol. Dic. v. 1. p. 144. Sir P. Home, v. 1. No 232.*