

SECT. VII.

Infestment on a Personal Right.—Sasine on a Precept of CLARE CONSTAT.—Infestment in a Right of Annual-rent, taken on a Precept in a disposition of the Property.

1688. *November 18.*

STARK *against* KINCAID.

No. 29.

STARK pursues Thomas Kincaid for reduction of the right of a tenement acquired by his father, by apprysing in favour of himself and his heirs whatsoever, on this reason, that by the contract of marriage betwixt his father and mother, the conquest during the marriage is provided to the heir of the marriage, and that he is heir of the marriage, and infest in the tenement by the magistrates of Edinburgh as heir of the marriage, in which tenement his brother as heir of line was infest, and was denuded. The defender alleged no process upon the pursuer's sasine, because it was null, for albeit there be a clause in the contract of marriage, providing the conquest to the heirs of the marriage, yet it is merely personal, and could be no ground to infest the heir of the marriage, unless his father had been infest, and his heirs of the marriage.

The Lords found this sasine null, and would not sustain process thereon.

Stair, v. 2. p. 802.

1739. *November 9.*

PURDIE *against* LORD TORPICHEN.

No. 30.

The exception of precepts of *clare constat* in the 35th act of the parliament 1693, was found to be absolute, and that such precepts became ineffectual, not only where the receiver, but also where the granter died before taking sasine thereon, though still such precept or sasine was understood to be a title of prescription. But when the obtainer of a precept of *clare constat*, who had taken his sasine after the superior the granter's death, had conveyed the lands to a singular successor, who had obtained from the succeeding superior many years thereafter a confirmation of all rights, titles, and securities, in respect the obtainer of the said precept of *clare* was then in life, although the confirmation was only in the foresaid general terms, the same was found to be effectual to the purchaser, and not challengeable by the heir of the ancient vassal, predecessor of the obtainer of the said precept. This confirmation was considered as of the same effect as if the superior