

No 15. have no power whatever of nomination or restriction, and, the community being free of that servitude, the Council would have had the free and uncontrouled liberty of chusing their Magistrates.

“ THE LORDS found, that the right of nomination of the clerk and fiscal to the town of Kilmarnock, was in the Earl of Glencairn.”

Reporter, *Auchinleck.* Act. *Walt. Campbell.* Alt. *Rac.* Clerk, *Gibson.*
P. C. *Fol. Dic. v. 3. p. 298.* *Fac. Col. No 91. p. 167.*

1777. June 17. DOWNIE against ALEXANDER.

No 16.
Disposition
of an area
in liferent
found to in-
clude a build-
ing afterwards
erected on
it.

ALEXANDER disposed to his daughter, on her marriage with Wallace, a certain area to her in liferent, if she survived her husband, and to the husband and his heirs in fee, reserving to himself the under story of any tenement to be erected on it by the disponees. Wallace before his death built a house on the area, which was of L. 10 yearly value, independent of the under story. After his death, his widow continuing to possess the house, his creditors adjudged the subject as the property of the defunct. The widow claimed right to it in virtue of an onerous disposition from her father of the area in liferent; and as it was then understood, and the disposition itself proceeded on the idea, that the husband was to build upon it, the plain intention of parties was, that the widow should have the liferent of the building, which was indeed her only provision, and *inædificatum solo cedit.* Answered, The building being erected by the husband on this liferented area, was clearly a *donatio inter virum et uxorem*, which was virtually revoked by his afterwards contracting debt: That the maxim *inædificatum solo cedit*, applies only to proprietors not liferenters; and besides, though that rule might hold in country estates, where the ground is the valuable part of the property, it will neither hold by our law, nor the Roman, in areas within burgh; but just the contrary, where the area being of inferior value ought to accrue to the tenement built on it. THE LORDS preferred the liferentrix to the rents of the tenement. See APPENDIX.

Fol. Dic. v. 3. p. 298.