

As to the houses and yards, the defenders

Pleaded, The infestment said to have been given *propriis manibus* of John Howie is null, because it was not subscribed by him.

Answered, It is no objection to the instrument of sasine, that it is not signed by John Howie, as the circumstances of the case afford evidence that it was agreeable to his intention; Stair, b. 2. tit. 3. § 19.; Stair, 11th February 1669, Buchan against Tait, *voce* PROOF; 23d January 1618, Murray against Shaw (Hope) *IBIDEM*; Stair, 29th June 1665, Norvel against Hunter, *IBIDEM*.

THE LORD ORDINARY found the fee of the subject, in the charter granted by Sir Thomas Bruce Hope, was in Thomas Howie the son, and that therefore the pursuer was entitled to her terce.

Upon advising a reclaiming petition, with answers, it was

Observed on the Bench, The dispositive clause of the charter clearly conveys the fee of the acres to the father, and the effect of any discrepancy in the precept would be, not to vest the fee in the son, but to make the father's right still personal.

As there was no previous disposition of the houses and yards by John Howie to his son, the instrument of sasine *propriis manibus* is null, for want of the father's subscription.

THE LORDS almost unanimously 'Altered the interlocutor reclaimed against, and assoilzied the defenders.'

Lord Ordinary, *Dregborn.* Act. *D. Cathcart.* Alt. *Neil Ferguson.* Clerk, *Pringle.*
D. D. *Fac. Col. No 13. p. 27.*

1801. November 25. WATHERSTONE against RENTONS.

No 75.

JAMES WATHERSTONE of Kirktonhill, in the year 1781, disposed the lands of Trabown to his daughter Christian; and to George Renton her husband, in conjunct-fee and liferent, and to the longest liver 'for their liferent-use allenary, and to the children procreated; or to be procreated of the marriage, equally in fee.'

Doubts having arisen with respect to the interpretation of this deed, whether it conveyed to the immediate disponees an absolute or a fiduciary fee, an action of declarator was brought at their instance, in which their children were called as defenders, to have it found that they had the power 'to sell or dispose of the lands, either for onerous or gratuitous causes.'

THE LORD ORDINARY reported the cause, but the Court were clearly of opinion, that the point was already fixed, and that after the decision of the House

A disposition taken to a husband and wife in conjunct-fee and liferent, to the longest liver, for their liferent-use allenary, and to their children in fee, conveys only a liferent of the subject to the parents, who hold the fee *fiduciary* for their children.

No 75.

of Lords in the case of Newlands, No 73. p. 4289, they were not at liberty to decern, agreeable to the conclusions of the declarator.

They accordingly found, that there was only a fiduciary fee in the pursuers.

Lord Ordinary, *Meadowbank.*

Act. *Macfarlan.*

Agent, *G. Tod.*

Alt. *Maconochie.*

Agent, *J. Dickson.*

Clerk, *Menzies.*

J.

Fac. Col. No 5. p. II.

See LIFERENTER.

See APPENDIX.