

F I A R.

DIVISION I.

In questions betwixt Husband and Wife, who understood Fiar.

SECT. I.

Right taken to Man and Wife, and their Heirs.

1562. July 30. JAMES RIG *against* TENANTS of N.

GIF ane tack and assedatioun be given and set to ane man and his wife, and the langest lever of them twa, the airis and assignayes, the wife, after her husband's deceis, may not make ane assignay to the said tack bot for her lifetime allanerlie; and thairfoir, gif sche happinis to deceis befor the ische of the said tack, the rest of the yeirs contenit therein to rin, aucht and sould pertain to hir husbandis airis, notwithstanding any assignatioun or dispositioun maid be hir in the contrare.

Fol. Dic. v. 1. p. 297. Balfour, (ASSEDATION.) No 7. p. 201.

* * Maitland reports the same case :

ANENT the action and cause perseued be James Rig, son and air to Mr Hew Rig, against certain persons for an teind, whilk Mr Hew Rig had in assedation for 19 years to him and his wife, and the langest liver of them twa, and their airis and assignees, compeared the third person and *allegit*, That the said James, as air foresaid, had no right to perseu the said teind, because Mr Hew's wife, after her husband's decease, made him assignee to the said teind, and years to rin of the said tack thereof, and transferrit all the right to him.—It was *allegit* be the said James Rig, air foresaid, That the said Mr Hew's wife might make no assign-

No 1.

A tack being let to a husband and wife, and longest liver of them two, their heirs or assignees, the Lords found, that the wife, after the husband's decease, could not assign it, except for her own lifetime.

No 1.

nation, nor transfer her right in prejudice of the air, that might endure or take effect langer than her lifetime, but the rest of the said years that were to rin of her tack sould return to the air after the decease of the said wife, notwithstanding the allegiance foresaid; whilk allegiance of the said James was admittit be the LORDS, and the contrair allegiance repellit, and fund be interlocutor of the said LORDS, that no woman, after the decease of her husband, may make assignee to any tack langer than her lifetime, in prejudice of the air; howbeit, the tack be set to the man and his wife, the langest liver of them twa, their airs and assignees.

Maitland, MS. p. 137.

COLLISON *against* LAIRD of Pitfoddles.

No 2.

IN an action of reduction of an assignation to a reversion pursued by Walter Collison *contra* the Laird of Pitfoddles, the LORDS found, That an assignation of a reversion being made to John Craig, and Janet Colt his spouse, and to their heirs, behoved to pertain to the man's heir, and not to the woman's.

Fol. Dic. v. 1. p. 297. Kerse, MS. fol. 64.

No 3.

A bond was taken payable to a husband and wife, and longest liver of them two, with an obligation to infest them, and their heirs in an annualrent. There being no heirs of the marriage, it was found, that the whole annualrent, after decease of the husband and wife, pertained to the husband's heirs.

1609. *November 10.*AYTON *against* JAMIESON.

BARTILL TULLO in Inveresk, and Jamieson his spouse, having lent 1000 merks to the guidman of Carberry, he obliged him to refund the said sum to them, and the longest liver of them two *successive*, at the term of payment; and failing thereof, to infest them, and the longest liver of them two, in conjunct fee, and their heirs in an annualrent of it, furth of his lands, and to pay, as well not infest as infest, and to refund the principal sum upon requisition, after the decease of Tullo. The guidman of Carberry repaid the sum to Jamieson, relict of the said Tullo, and she deceasing, Ayton, assignee to Tullo, heir of the said Bartill Tullo, having obtained the contract transferred, charged Carberry to pay the annualrent. He suspended, upon the tenor of the contract ordaining the annualrent to pertain to the said husband and wife, and to their heirs, whereby the hail sum, and profit thereof, should pertain to the said Jamieson, being the longest liver; or at least, the half behoved to pertain to her heirs, seeing the sum was destined to pertain to their heirs. Notwithstanding whereof, seeing there were no heirs procreated betwixt them, the LORDS found, That the hail principal, and profit thereof during the non-redemption, should pertain to the heirs of the husband, and that the heirs of the wife should have no part thereof.

Fol. Dic. v. 1. p. 297. Haddington, MS. No 1637.