

taken away by a posterior charter of the said lands granted in anno 1430, by the saids Thomas Kinnaird and Geillis Murray, for greater sums of money; which charter was ratified thereafter by the said Geillis in her widowhood, and the-said ratification confirmed by King James the Second, and ingrossed in his charter under the Great Seal, anno 1440; likeas, there was a precept of sasine direct upon the said posterior charter by the said Thomas and Geillis, with a sasine *in secunda cauda*. To this was *answered*, That the second charter could make no derogation to the reversion, because it was not shewn and produced, neither could the ratification of the wife, ingrossing that charter, supply the not production, nor the King's confirmation of the ratification, because it did not confirm the charter, nor make mention of the production thereof, but only of the ratification, and the precept of sasine might as well agree with the first charter extant as with the second. In respect whereof, the Lords repelled the exception. Thereafter, the defender *alleged*, that the reversion being given to Thomas Kinnaird and Geillis Murray, and their heirs; and giving power to the said Thomas and Geillis to redeem, and obliging Gilbert Menzies to renounce to the said Thomas or Geillis, that Geillis had renounced the reversion which she had power to do. THE LORDS considering, that when reversions were given to the husband and the wife, and their heirs, that it could make no further power to the wife, but to redeem, to the effect she might bruik during her lifetime, the fee returning to the heirs, that it gave not power to the wife to discharge the reversion, and therefore they repelled the exception. It was thereafter offered to be proven, that Geillis Murray was heritrix of the land, and so the reversion being given *aque principaliter* to her of her own heritage wadset, it agreed with law and reason, that, after her husband's decease, she might discharge the reversion; which duply was found relevant. But it was thereafter taken away by allegeance, that the pursuer offered to prove, that long before the discharge of the said reversion, granted in anno 1438, the said Geillis Murray made resignation of the lands in the hands of King James the First, upon the Friday before he was slain in anno 1437, in favour of Allan Kinnaird of that ilk her son, whereupon he obtained infestment under the Great Seal from King James the Second anno 1440; and so she being denuded by resignation in anno 1437, she could not discharge the reversion thereof. In respect of which answer, the LORDS repelled the exception and duply.

Fol. Dic. v. 1. p. 298. Haddington, MS. No 2336.

1623. *March 11.*

DOUGAL *against* HENDERSON.

A SUM being payable to a woman and her husband, and he long surviving her and then deceasing, the LORDS sustained action at the instance of the wife's

No 19.

No 19. executors, but ordained that execution should pass at their instance only for half of the sum.

Fol. Dic. v. 1. p. 298. Durie.

* * * See this case No 26. p. 3844.

1632. February 2. BARTILMO *against* HASSINGTON.

No 20.

A wife disposed all her goods, gear, &c. to her husband, to be possessed by him and her during their lives, and after their decease to their heirs, executors, and assignees. There being no children alive at the dissolution of the marriage, the husband was found to have the liferent of the whole, and the property only of the half, the subjects being disposed in general; but an heritable right so provided would have pertained to the husband and his heirs, as *personæ digniores*.

IN a contract of marriage betwixt Euphan Hassington and Patrick Bartilmo, the wife disposes her goods and debts, condescended on in the contract, to her said future husband, to be bruiked by him and her, and the longest liver of them two, during their lifetime, and after their decease to their heirs, executors, and assignees; and the wife dying, no bairns being begotten betwixt them being on life, her executors pursue the debtors of the wife, assigned in the foresaid contract for payment thereof; wherein the husband compearing, *alleged*, that the goods pertained to him, in respect of the disposition contained in the contract; and the pursuer *answering*, that he could have no right, but to his own just half thereof, in respect the clause of the contract bore, 'the same to be disposed to their heirs;' which being in the plural number, imports division betwixt the husband's heirs and the wife's; and the husband *answering*, that the clause must be interpreted only of the husband's heirs *tanquam personæ digniores*, and which agrees with the practiques of this country, even as in heritable rights, and infestments granted to the husband and wife in conjunct fee, or liferent, and to their heirs heritably, there is no division *hoc casu* betwixt their heirs, where they have no bairns; but the fee only belongs to the husband's heirs. THE LORDS found, in respect of the foresaid tenor of the contract, that the husband ought to have his liferent of the whole goods contained in the contract, which were extant the time of the wife's decease, and that he had no right to the property, but only to the just equal half thereof, and that the other half pertained to the wife's executors and heirs; for the contract being of goods and gear, and sums of money, and bearing the word, 'their heirs,' ought not to be respected, as infestments of heritable rights, which by that clause imports no division, but pertains only to the husband's heirs, except it be more specially provided otherwise; for albeit the husband, while the wife lived, might have assigned and disposed the whole goods, yet after her decease, he had no more right than he had provided himself unto, by the said contract.

Clerk, *Hay*.

Fol. Dic. v. 1. p. 298. Durie, p. 617.