

THE LORDS decerned Lammington to pay the sum to the use of the children, but appointed it to be put in the clerk's hands, that security might be taken therefore to the parents in liferent, and to the children in fee, by the sight of the Lords.

No 45.

Lammington further *alleges*, that he being charged upon a bond of corroboration of a former security by infeftment, he was not obliged to make payment to the chargers, because they were never infeft, but had only an assignation from James Menzies the father, who was but liferenter, and his two sons were fiars, and were not only heirs-substitute, because they were infeft in their father's life, and in the same infeftment with him. *2do*, Lammington was not obliged to pay till his lands were disburthened of the infeftment by resignation of persons infeft.

THE LORDS found, that James Menzies the father was fiar, and, during his life, might uplift and dispone at his pleasure; and that the two sons were but heirs substitute, and their infeftment did supply the necessity of infeftment as heir, after his father's death; but found that Lammington ought not to pay, till his lands were disburthened by resignation of a person infeft as heir both to the father and to the sons, they being all dead, and one person falling to be heir to all the three, that no question might arise to Lammington, to whom the fee belonged.—*See SERVICE and CONFIRMATION.*

Fol. Dic. v. 1. p. 301. Stair, v. 2. p. 360.

S E C T. IV.

Whether it is expressed, that the Father is Liferenter only.

1626. July 28. L. TULLIALLAN *against* L. CLACKMANAN.

IN a suspension betwixt the L. of Tulliallan against L. Clackmanan, anent the payment of the principal sum of 4000 merks, and annualrent thereof, which sum Tulliallan was obliged to pay to the L. of Clackmanan, and his spouse, and the longest liver of them two, at Whitsunday 1625; and, in case of their deceases, to Alexander Bruce their son in fee; and, upon this obligation, follows infeftment, after the said term of the said annualrent, for the said principal sum, to the said L. Clackmanan, and his spouse, in liferent, and to their said son in fee. In the said obligation it is provided, that the suspender should be obliged to pay the principal sum at any term whereat he should be charged, notwith-

No 46.

A bond was taken to the lender and his spouse, and the longest liver of them, at a certain term, and to their son *nominatim* in fee; upon which infeftment followed after the

No 46.
 term to the husband and wife in life-rent, and the son in fee. The father was found to have right to uplift the sum, in respect of a clause in the bond, bearing, that, notwithstanding the infeftment, the debtor should be obliged to pay the sums to the husband and his wife in manner foresaid, which was understood to refer to the destination in the personal obligation.

standing of the infeftment without requisition, to the said L. of Clackmanan, his said spouse, and their said son, in manner foresaid. In this cause it being controverted, if the L. of Clackmanan might charge for the principal sum, seeing he remained naked liferenter thereof, and the fee was established in his son's person by the infeftment taken thereof in that manner, after the term destined in the bond, for payment of the principal sum, whereby it was *contended*, that the liferenter could not uplift the sum in prejudice of the fiar, but only have his liferent of the annualrent of the same, specially the fiar being deceast, whose heir would have the undoubted right to the said principal sum after the liferenter's decease;—THE LORDS found, that notwithstanding of the infeftment of fee standing in the person of the son, that the father might charge for the principal sum, and uplift, and dispone upon the same at his pleasure, in respect of the clause and provision foresaid, conceived in the obligation, which bore, that the debtor, notwithstanding of the infeftment, should remain obliged to pay the sum to the L. of Clackmanan, his said spouse, and their said son, in manner foresaid. Which words, viz. 'in manner foresaid' the LORDS found, ought to be ruled by the preceding clause of the bond, bearing the debtor, as said is, to be obliged to pay the same to him and his spouse at the term of Whitsunday 1625; and in case of their deceases to their son. By the which clause the LORDS found, that power remained with the father, in his own time, to uplift the sum; and use the same at his pleasure, so long as he lived; and that the fee only was acquired and conferred to be in the son's person in case of the father's decease, who being on life, might charge for the principal sum, and employ the same at his pleasure. And this was found, because he had charged for the principal sum, upon the which charge the suspender had provided the money, and consigned the same, albeit Clackmanan *alleged* that he was only a naked liferenter, and that the fee remained with his son, and his heirs, so that he had no right to charge for the principal sum; and if he had used any charges for the same, he past therefrom, and declared, that he charged only at this time for the bygone annualrent thereof; which allegiance was repelled by the LORDS, for they found, that Tulliallan, upon that charge, had reason to obey, and might lawfully have paid the sum to the charger, or consigned the same; and that the father's declaration foresaid should not prejudge him who had consigned the money.

Act. *Primrose.*

Alt. ———.

Clerk, *Hay.*

Eol. Dic. v. I. p. 301. Durie, p. 231.

1629. February 20. L. DRUMKILBO *against* Lo. STORMONTH.

No 47.
 A bond for the price of lands was granted to

A FATHER, fiar of some lands, selling the saids lands, and the price in the contract of alienation being obliged to be paid to the father at the term therein mentioned, and, in case of his decease, to his son named in the contract; and,