

S E C T. VI.

Method of obtaining infestment where property and superiority coincide in one person.—Method of obtaining it by a singular successor, after resignation is accepted of.—Where the precept does not specially mention the lands.—Method of infesting a Remainderman.—Where a disposition is adjudged, not containing precept of sasine.—Base infestment competing with a public right.

1634. June 21.

B. Supplicant.

This day a supplication was given in to the Lords by ———, propositing, that he was prebendary of ———, of the which prebendary the lands of ——— were holden; and of which lands, he was heritor, so that he could not grant a precept by himself to himself, to take sasine of these lands, and therefore craved a warrant to the director of the Chancellory, to give out precept and charges to the Sheriff of the shire, to give him sasine of these lands. This supplication was granted; for it was considered by the Lords, that no person could have prejudice thereby, and that it was also needlessly craved by the supplicant; for he being heritor of that land, which held of a prebendary, of a kirk benefice, viz. the priory of Creil, and he being also prebendary himself, during his lifetime, of that prebendary, whereby he became for his lifetime superior to himself of these lands, he might as prebendary infest himself as heritor, by his precept direct as prebendary, for he had two relations; and this was of old done by the Earl of Bothwell, who being prior of Coldingham, and heritor of lands holden of the said priority, directed precepts, as prior, to infest himself as heritor, and the same was found lawful and sustained; but I like the form desired by this supplication rather, whereby there was no such confusion as is in properties and superiorities, where the superiorities are also heritable, *quo casu* the property accrescing to any who is heritable superior, there is no necessity of a new sasine, seeing the sasine of the superiority, will carry with it the property, where there is no other proprietor; but it is not so in those benefices conferred upon persons, temporally provided for their lifetime, where their provisions may give them right to the fruits of all belonging to their benefices during their lifetime, but will give them no longer right to any lands, or other things holden of that benefice, without a new right lawfully acquired and established in their person. See CONSOLIDATION.

Fol. Dic. v. 1. p. 471. Durie, p. 719.

1668. November 26. The DAUGHTERS of MR JAMES MORTON Supplicant.

THE daughters and heirs of Mr James Morton gave in a supplication to the Lords, making mention that their father being infest in an annualrent, effeiring

No 33.

Where the property and superiority coincide in one person, he, as superior, may either grant a precept for infesting himself as vassal; or obtain a warrant to the director of the Chancery to issue such precept.

No 34.

Found in conformity with the above.