

BASE INFESTMENT.

1311

being obliged by her contract of marriage, to as great provision as the avail of these lands yearly extended to; which not being done, the LORDS sustained this infestment, seeing she had nothing for her provision but the same: And it was not respected that her infestment had no relation of being made for implement of her contract of marriage, nor made mention thereof.

No 42.

A& Bruce.

Alt. Nicolson.

Clerk, Hay.

Fol. Dic. v. 1. p. 90. Durie, p. 721, 722.

1635. July 17. Lo. CRAIGHALL against BOTHWELL.

THE Lo. Craighall pursues reduction against Mr Adam Bothwell and his son, and Mr Adam having infest his son, being then an infant, in his lands of with reservation of his own liferent, by a base infestment to be holden of the granter; and so the father continuing in possession of the lands, while thereafter that he sells the same to the Lo. Craighall, by a public infestment, to be holden of the superior, by virtue whereof the Lo. Craighall became year and day in possession of the said lands; upon which public infestment, so clothed with possession year and day, he intents reduction of the said prior base infestment, upon the reason of the act of Parliament, Ja. 5. anno 1540, Par. 7. cap. 105. which annuls base infestments, where there is a public right made to one for onerous causes, and which is clothed with possession year and day, as said is; albeit posterior to the said prior base right, made by the father to the son; which reason being referred to the LORDS (the party being absent) and the production being satisfied by the pursuer's self; the reason was found relevant, and the reservation of the father's liferent contained in the infestment granted to the son, and the father's possession according thereto; was found no possession; to warrant that right made to the son, as if the son's right and infestment had been thereby clothed with possession; but the public infestment was sustained; and also because this action was both a reduction and improbation, and that the pursuer satisfied the production in the reduction, by production of an extract of the writ called for to be reduced, which was enough, so far as concerned the reduction libelled; and that the pursuer insisted for production of the principal writ itself, and for improbation of the same:—THE LORDS, in respect the principal was not produced, to satisfy the improbation, decerned the same to make no faith, for not production; which certification the LORDS found ought to be granted, albeit the extract was produced by the pursuer's self *quoad reductionem*, and that he acquiesced therewith in the reduction, the production whereof was found no impediment to stay the certification against the principal of that same extract *quoad improbationem*; and therefore it was decerned to make no faith. The like reason of reduction was found relevant betwixt Cant *contra* L. Lawriston. See PROCESS.

No 43.  
A son being infest, holding of his father, the father's possession upon a reserved liferent was not found to validate the son's right. The Lords held, that creditors would not be secure, if possession by such reservation betwixt father and son, were sufficient.

A&. Advocatus, present.

Alt. Absent.

Clerk, Scot.

Fol. Dic. v. 1. p. 90. Durie, p. 772.