

wanting, that she might be preferred in the first place, and Patrick Murray in the second place. See HUSBAND and WIFE, *Fol. Dic. v. 1. p. 89. Stair, v. 1. p. 230.*

No 36.

1667. July 18.

LADY BURG against HER TENANTS, and SIR JOHN STRACHAN.

THE Lady Burg pursues the tenants of her liferent-lands to remove; compearance is made for Sir John Strachan, who alleges that he stands publicly infest in this land, and in possession, and will not suffer his tenants to remove.—It was replied, That the pursuer's infestment in liferent is long before Sir John's, and could take no effect till now that her husband is dead.—It is answered, That the Lady's infestment is base, and, therefore, though it be prior to Sir John's public infestment, it cannot be preferred thereto; unless it were alleged it was clad with possession before the public infestment, either by the Lady's own possession, or at least by her husband's possession; but she cannot allege either, because these parties were in possession from the date of her infestment, till the date of this public infestment.—It was answered for the Lady, That she offered to prove her husband was in possession after her infestment, and before the defender's infestment, by himself, or at least by those who derived temporary, or redeemable rights from him, or his authors, as liferents, wadsetts, and unexpired comprisings.—It was answered, That albeit *favore matrimonii* the husband's possession, though common author, be counted the wife's possession, yet the possession of a wadsetter, or appriker, are neither said to be the wife's possession, nor the husband's, because they possess *proprio jure*, and the husband had only a reversion.

No 37.
The husband's possession is accounted the wife's possession, so as to validate her base right; although it be not the natural possession, but by tenants, wadsetters, &c.

THE LORDS found the allegiance relevant for the Lady, that her husband possessed after her infestment, and before the public infestment, either by himself, or by any deriving a temporary right from him, or his authors.

Fol. Dic. v. 1. p. 89. Stair, v. 1. p. 475.

* * Dirleton reports the same case :

A base infestment given by a husband to a wife, was sustained after the husband's decease, as public, and clad with possession, albeit the husband was not in possession the time of granting the right: In respect, either he, or others, by redeemable rights and tacks given by him, came in possession thereafter.

Dirleton, No 100. p. 39.

1672. February 21.

JAMES REID against COUNTESS of DUNDEE.

MR. JAMES REID being infest in an annualrent by the Earl of Dundee, pursues a pouding of the ground; compearance is made for the Countess of Dun-

No 38.
A wife's base right, flowing from her husband, was