

1667. *January 3.* SMEATON *against* CRAWFORD.

No. 7.

Who to be understood heir of line? Who, of conquest?

Unquhile Peter Smeaton granted a disposition to Crawford his wife, and her heirs, of a tenement of land, whereupon nothing following during her lifetime. Her younger brother James Crawford served himself heir-general to her, and obtained a decret of implement against John Smeaton as heir to his father, and having used horning thereon, obtained adjudication against Smeaton, and his superior, and thereupon was infest; which right was disposed by him, with consent of William Crawford, elder brother to the wife. The said John Smeaton disposes the same tenement to Alexander Smeaton, and he is infest, and thereupon pursues a reduction of James Crawford's retour, and of all that followed thereupon in consequence, on this reason, that the disposition to the wife belonged not to James Crawford her younger brother, who was heir of line, but to William Crawford, her elder brother, as heir of conquest, and so the service was null, following thereupon; and the pursuer being first infest from Smeaton, he hath the only right, because any infestment to William, the heir of conquest, will be posterior. It was answered, that it was *jus tertii* to the pursuer, whether the heir of line was served or infest, or the heir of conquest; likeas the heir of conquest did concur, and had consented to the disposition.

The Lords found not the defences relevant, but considering the case as calumnious, seeing it was but of late cleared by decisions, whether the heirs of line had right to dispositions without infestment, they did supersede to give answer, but ordained the defender to give in what evidences he could give of the onerous cause of his disposition.

*Stair, v. 1. p. 424.*

1675. *July 7.* ROBERTSON *against* The LORD HALKERTOWN.

No. 8.

A father granted bond to his daughter, obliging himself to infest her in an annual rent out of certain lands. The bond contained a power to her to call for the principal sum upon requisition. Found, that the bond being principal-

The said Robertson being assignee, constituted by Sir Patrick Falconer, as heir of line to Margaret Falconer his sister, in and to a bond made by the deceased Lord Halkertoun, her father, containing precept for infesting her in his lands in an annual-rent, effeiring to the sum of 1,000 merks, upon which it was redeemable, did intent action against Halkertoun as heir to his father, for payment of the foresaid sum. It was alleged for the defender, That the pursuer could have no right as assignee by the heir of line, because the said sum being secured by an obligation to infest in an annual-rent, did belong to the heir of conquest and not to the heir of line. It was replied, That there being no heir of conquest comparing, it was *jus tertii* to the defender. *2do*, The disposition of the said annual-rent being only for security of the daughter's portion, payable upon requisition, and no infestment following thereupon, it cannot belong to the heir of conquest but to the heir of line, which hath been the constant custom and law of this kingdom; seeing