

No 26. THE LORDS found the clause to carry the stock of the money, and preferred Dorathy. And it being thereafter offered to be proved, that by the custom of England, such clauses signify only the liferent use, the LORDS repelled the allegiance, in respect of the clause, being provided to Dorathy's heirs and assignees, and in respect of the clearing the meaning thereof by the testament would not delay the process upon the proving the custom of England, the matter being clear in contrary.

Stair, v. I. p. 117.

1680. June 30.

JORDAN *against* HOMES.

No 27.

WHERE a sum is taken payable to a woman in liferent and her son in fee, the LORDS found the money payable to the liferentrix, but that she could not lift it without citing of the fiar to see it re-employed, or caution found; but granted a diligence to cite him in that same process; and found it not enough that the grandfather offered to consent to the uplifting of it by her.

Fol. Dic. v. I. p. 549. Fountainhall, MS.

1702. December 17.

OGILVY *against* STORMONTS.

No 28.

An heritable debt being payable to one in liferent, and another in fee, the Lords found a requisition null, because used only at the instance of the liferenter, and not of the fiar, although, by the clause of requisition in the bond, the liferenter had power to uplift and re-employ for his liferent use.

OGILVY of Ascreavy grants an heritable bond for 2000 merks to James Stormont in liferent, and Thomas his son in fee, containing a clause of reversion on premonition of 60 days, and also a clause in favour of the annualrenters, empowering them to use requisition in the same manner, and thereupon they are infest. Ascreavy in August 1700, uses an order of redemption against them, and premonishes them to receive their money on Martinmas thereafter; and in respect of their absence, consigns it, and pursues a declarator, and obtains a decret of redemption in July 1701. Stormonts, on this, do likewise use a requisition and charge for their money, and suspend his decret of declarator; which brings in the whole affair. *Objected* by Stormonts, That Ascreavy's premonition was illegal, it being only made to the son, and not to the father, liferenter, though the clause of reversion bears, that both ought to be premonished. *2do*, The attendance and consignation was on the day after Martinmas, and so is disconform to its warrant, which bears Martinmas day. *3tio*, His instrument bears, that he only attended betwixt ten and twelve, whereas the clause is between sun-rising and sun-setting. *4to*, The decret of declarator is stolen forth in absence, and not put up in the minute-book. *Answered* to the *1st*, It was personally intimated to the son, and he required to advertise and premonish his father, which was sufficient. To the *2d*, Martinmas that year falling on a Sunday, he could not use the order and consignation that day, but did it the