

rent in the disposition of the fee may be called in some manner the institution of a liferent by the husband; and all this was long before the crime of rebellion was committed either by the father or son.

No 33.

'THE LORDS found the second alleageance and reply relevant to defend the liferent against the gift of forfeiture.'

The cause being again called, it was *alleged* for the donatar; That in charters of confirmation in Exchequer, they do not consider clauses relative to the procuratory, but only the subject expressly confirmed; and although the charter bears, 'under the provisions expressed in the procuratory,' yet these provisions being restrictions of the disposition, and the warrandice thereof, are not considered to be confirmed; and suppose the charter had expressly narrated the Lady's liferent, that ought not to be looked on as confirmed, seeing the subject of the confirmation is only what is disposed, and what is reserved is not disposed, and consequently not confirmed; nor would such a confirmation of ward (lands) import a confirmation of a liferent so reserved.

*Answered*; That reservations in charters, either express or relative to procuratories, ought, and are presumed to be considered, and fall under the confirmation if not reserved from it.

THE LORDS adhered to their former interlocutor; because a liferent may be also constituted by reservation, though it would be otherwise in the case of a reserved right of fee.

Upon a new calling, it being *alleged* for the donatar, That the clause runs thus, 'under the provisions, conditions, &c. in the procuratory in favours of' William Gordon, who was the disponent, and did not bear these words, 'in favours of the Lady;' so that the reservation was taxative to the husband,

'THE LORDS again adhered to their former interlocutor.'

*Harcass*, (FORFEITURE.) No 495. p. 636.

1686. December 3. VISCOUNT STRATHALLAN *against* MONTGOMERY.

A CREDITOR of Montgomery of Lainshaw's, a forfeited traitor, having arrested some teinds prior to his commission of the crime, and Strathallan being donatar to his forfeiture, he claimed them, because they were not fully affected before the crime, there being no sentence nor decret to make forthcoming; and an arrestment is but an inchoate diligence, which vanished by the succeeding forfeiture. THE LORDS preferred the donatar; though it was *alleged* for the arrester, that the confiscation of moveables, by rebellion, was but equivalent to an escheat of moveables, in which case a creditor arresting before denunciation, would be preferred; which the LORDS repelled, in this case of Strathallan's. See 22d February 1628, Anderson *against* Gordon, No 37. p. 3643.

No 34.

*Fol. Dic. v. I. p. 314. Fountainhall, v. I. p. 434.*