

the suspender's right being only but a personal disposition, from the Earl of Marishall, whereupon no infestment has followed, it could not defend against the removing, albeit that right was reserved in the charger's disposition, which reservation can only import that the charger should have recourse of warrandice against his author, but not validitate the suspender's right, so as to make it preferable to the charger's right, THE LORDS sustained the defence, viz. that the charger's right bears a reservation of the suspender's wadset, and finds the same proved by the right produced, and therefore suspended the letters *simpliciter*.

No 35.

Sir P. Home, MS. v. 2. No 835.

1715. February 10.

GEORGE HAMILTON, and HAMILTON of Grange, his Father and Administrator
against Captain GEORGE BOSWELL.

IN an action of removing, at the instance of these pursuers against Captain Boswell, it was, among other points, *alleged* for the defender, That the pursuer's title seemed defective, he being only infest on a precept of sasine granted by the father, as administrator of law for him; which is the same thing as if the pursuer, being major, had granted a precept for infesting himself, which could never be sustained.

No 36.
A precept of sasine by a father, as administrator in law for his son, a sufficient title.

Answered for the pursuers, That our custom has directed the method of a superior's establishing the right of property in his own person, upon that superveniency, viz. either by obtaining precepts from the Chancery, if the King be the superior's immediate superior, or by the superior's granting a precept for infesting himself in the property, which was done here. And though thus it falls out that the giver and receiver of the infestment is the same person, yet that is no matter; for one man often *sustinet duplicem personam*; and in different respects, and different rights, the same person may both give and receive. And this method of taking infestment was solemnly found to be proper, in the case of the Daughters of Mr. James Morton, No 34. p. 6917. 26th November 1608.

THE LORDS repelled the nullity, and sustained the summons and warning *adhunc effectum*, to make the defender liable to remove from the lands at Whitsunday next, but not for violent profits.

Act. *Dakerfj*

Alt. *Troup*

Clerk, *Dalrymple*

Bruce, v. 1. No 65. p. 79.