

SECT. V.

Special Service.

1676. *February.* RICARTON DRUMMOND *against* _____

No. 30.

THE Lords found, That a special service in an annual-rent doth give right to heritable bonds, and all other heritable estate, whereupon infestment did not follow; and includes a general retour, as *homo* doth include *animal*.

Reporter, *Newbyth.*Clerk, *Hamilton.*

Fol. Dic. v. 2. p. 372. Dirletan, No. 323. p. 157.

1733. *July 20.* SIR JAMES SUTTIE *against* DUKE of GORDON.

No. 31.

THE service of an heir cannot be stopped by a disponee deriving right from the defunct, without infestment, upon the pretext, that it was *frustra*, unless the heir could quarrel the disposition, though the disponee was willing instantly to debate the point of right; for if an apparent heir were pretending to quarrel his predecessor's disposition, it would be a good objection, that he could not insist in the reduction without being served; therefore *e contrario*, a disposition cannot afford a sufficient objection to stop a special service. See APPENDIX.

Fol. Dic. v. 2. p. 371.

1761. *November 25.*

ARCHIBALD DOUGLAS of Douglas, Esq. and his TUTORS, *against* GEORGE JAMES DUKE of HAMILTON, and his TUTORS, and DUNBAR EARL of SELKIRK.

No. 32.

ARCHIBALD Duke of Douglas was infest in his estate upon a charter from the Crown, in 1707, in favour of himself and the heirs-male of his body, whom failing, to the heirs called by deeds executed by his father.

In 1759, the Duke became bound to settle his estate upon his heirs-male of that or any subsequent marriage; whom failing, upon the heirs-female of the marriage; whom failing, to such heirs as he had named, or should name, in the settlements made, or to be made, by him; and failing thereof, to his own nearest heirs and assignees whatsoever.

Upon the 11th July, 1761, the Duke executed an entail, in which he granted procuratory for resigning his estate in favour of himself and the heirs whatsoever

Special service of the heir of investiture cannot be stopped by an heir of provision under a personal deed, to which he has made up titles by a general service.