

No 43.

state and sasine was given, conform to the tenor of the precept, February 1684, Murray against Hope, *voce SASINE*. The words of this infestment, "liferent state and sasine," are by all our writers on Stiles, and the universal practice of notaries, understood to mean an infestment in the liferent alone, according to the common sense and meaning of those words, and in opposition to heritable state and sasine, which are constantly used to denote an infestment of fee; the other words, actual, real, and peaceable possession, being common to both. *3tio*, In the case of Frog it was indeed found, that a grant of lands to a man in liferent, and to the heirs of his body, in fee, made him fiar; but there the dispute turned upon the import of the destination, not of the infestment, which bore, that the bailie gave *statum et sasinum hæreditariam*; a circumstance which has escaped the Reporter of that case. And, further, the question was there between the creditors of the disponent and his own children, who could, at any rate, only take as heirs to him, and, consequently, be liable in his debts; whereas, here it is between creditors equally onerous, and who cannot be hurt in their present plea, by their having, for some time, mistaken the nature of the right which was in their debtor.

' THE LORDS found, that only the liferent was vested in the person of Alexander Reid, by his infestment; and remitted to the Lord Ordinary to proceed accordingly.'

Reporter, Lord Justice Clerk. For Graham & Smith, D. Graham, Ferguson.

For the Adjudgers, Rae.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 318. Fac. Coll. No 189. p. 337.

D. R.

1761. February 27.

DRUMMOND of Hawthornden *against* DRUMMOND of Lundin.

No 44.
Form of rectifying an erroneous charter and infestment, after being put upon record.

WILLIAM DRUMMOND of Hawthornden, in the marriage-contract of his eldest son William, became bound 'to infest the said William Drummond younger, and the heirs-male of his body; which failing, the heirs-male of the body of the said William Drummond elder; which failing, the heirs-female of the body of the said William Drummond younger,' &c. By virtue of the procuratory contained in this settlement, resignation was made in the hands of the Barons of Exchequer, and a signature prepared and passed in Exchequer; but, by a blunder in Alexander Pitcairn, clerk to the signet, the charter was made out by him in terms different from its warrant. For, instead of being conceived as in the marriage-contract, in the instrument of resignation, and in the signature, to the heirs above mentioned, it was conceived in the following terms:—'Dedisse, concessisse, et disposuisse, &c. dilecto nostro Gulielmo Drummond, Juniori de Hawthornden, filio natu maximo Gulielmi Drum-

‘mond, Senioris de ejusdem, et hæredibus suis masculis; quibus deficientibus, hæredibus masculis dicti Gulielmi Drummond senioris; quibus deficientibus, hæredibus femellis dicti Gulielmo Drummond junioris,’ &c. And sasine was expedé in the same terms.

Mrs Drummond of Hawthornden was the only child of the marriage, and was entitled to the succession of the estate. But, finding the estate erroneously devised in the charter to her father’s heirs-male, and the heirs-female in general, instead of the heirs-male and female of his body, she was advised to bring a reduction and declarator against the collateral heir-male, concluding, that the charter should be reduced, or rectified. No compearance was made for the defender. And the point being reported to the Court, it was craved, that warrant should be granted to the Keeper of the Great Seal, and to the Director of Chancery, to make the due alterations, both in the record of the Great Seal, and in the charter itself: That the like warrant should be granted to the Keeper of the Privy Seal, to alter the record of the Privy Seal; and that warrant should be granted to the Lord Register, to alter the sasine and record thereof: Or, if it was thought that the records could not be altered, it was craved, that the charter and sasine should be totally reduced; and that it should be found and declared, that the pursuer is entitled, either upon the resignation already made, to expedé a new charter and infestment in her own favour; or, of new, to execute the procuratory, and to expedé a charter and infestment in her own name.

Neither of these methods was approved by the Court. It is not the practice, nor is it necessary to alter the record. As the lands were fairly resigned upon the procuratory, it cannot be executed a second time. An easier and more regular method occurred, which was to pronounce an interlocutor, finding, that the pursuer was entitled to serve heir in special to her father, which would be a direction to the inquest to serve her accordingly; and which interlocutor being inserted in the service, would carry on the chain of the title-deeds as clearly as if the charter had been regularly expedé. And, accordingly, an interlocutor was pronounced in the following terms: ‘Upon report of Lord Woodhall, the LORDS find the charter and infestment mentioned in the libel erroneous, as being disconform to the procuratory of resignation, contained in the contract of marriage libelled, and to the signature of the resignation passed in Exchequer thereupon: And find, that the pursuer has right to make up her titles to the estate, as heir of provision in special to her father, in the same manner as if the charter and infestment had been properly expedé; and decern and declare accordingly.’