

be understood of a complete apprising. Because they mention apprisings against the disponent, and not apprisings against the obtainer of the disposition.

THE LORDS found, That the whole right in James Stuart's person, by the disposition made in his favours, having been conveyed to his sister by the general service; her discharge and renunciation was a mid-impediment and effectual stop to any subsequent confirmation of the infestment *a me*, which was once in James's person.

Fol. Dic. v. 1. p. 192. Forbes, p. 700.

No 5.

S E C T. II.

Confirmation of Infestments to be holden *a me & de me*.

1680. July 15.

The BISHOP of ABERDEEN *against* The VISCOUNT of KENMURE.

THE Bishop of Aberdeen pursues a pointing of the ground of the baronies of Kenmure and Kirkmichael, upon an infestment of annualrent.—It was *alleged* for Kenmure, heritor of these baronies, That the annualrent was in non-entry, by the decease of the Lord Whitekirk, who was infest therein upon a precept relative both to the infestment from his author, *a se et de se*, which not being confirmed in Whitekirk's life, the Bishop's retour should have retoured the annualrent, as being in the hands of Kenmure by non-entry, and not in the hands of the King, who was not Whitekirk's superior till the confirmation; *2do*, Whitekirk's sasine was null, as not having four witnesses.—It was *answered*, That such sasines upon precepts relating to infestments, both public and base, are always applicable to either infestment, as the party infest pleases; and when a confirmation supervenes, the right becomes public, holden of the superior, and the confirmation perfects the sasine from the date of the sasine; so that the confirmation being before the Bishop's retour, the annualrent was rightly retoured, as in the King's hand, and Kenmure was never superior; and as to the sasine, four witnesses are only required to writs of consequence, to be subscribed by the granters, who cannot subscribe with their hand, and was never extended to sasines, or any instruments of notaries, proceeding upon a warrant sufficiently subscribed.

THE LORDS found, That if Whitekirk had taken infestment expressly, to be holden of his author or successor, the annualrent would have been in non-entry till the confirmation; but, the sasine bearing applicable to both infestments, *a se, et de se*, that the application made by the confirmation, did exclude the non-entry, and perfected the sasine *a se* from the date of that sasine; and found no necessity of more than two witnesses in a sasine.

Fol. Dic. v. 1. p. 193. Stair, v. 2. p. 786.

17 L 2

No 6.

Sasine being taken upon an obligation to infest *a se et de se*, without relating specially to either, a posterior confirmation was found to perfect the sasine *a se*, not only from the confirmation, but from the date of the sasine; upon which footing, the creditor in an annualrent right having died before confirmation, the annualrent right was found to be in the superior's hands by non-entry, who confirmed it.

No 6.

*** Fountainhall reports the same case :

OBJECTED against a sasine, that it wanted four witnesses, having only three, and so was null.—THE LORDS sustained the sasine. *Alleged*, The Bishop's was in non-entry. *Answered*, He had a charter of confirmation.—THE LORDS found, if the charter of confirmation be a charter *a me*, to be holden of the granter's superior, then the confirmation is drawn back to the date, and stops the non-entry so as to exclude Kenmure ; but if the charter was *de me*, then the confirmation does not stop the non-entry, for the confirmation of a charter *de me* excludes only the King from the casualty of recognition, but not from non-entry.

Fountainhall, MS.

*** The following additional particulars are afterwards reported by Lord Fountainhall.

1680. *January 27.*

A COMPRISER of Kenmure's estate ratifies an annual rent furth of it ; thereafter the comprising is conveyed in Kenmure's person, and expires ; and he quarrels the annual rent after the expiration of the legal.—*Alleged*, He can never be heard, in respect of his author's ratification of it.—*Replied*, That militated against him indeed during the running of the legal, but cannot be obtruded now, never having redeemed nor used an order.—THE LORDS inclined to find Kenmure could not question this base infeftment, he being the apparent heir ; but it was not then decided.

Fountainhall, v. I. p. 127.

No 7.

1687. *June.* BOTHWEL of Glencorse *against* DEANS of Woodhouselee.

A SUPERIOR confirming an infeftment indefinitely, which had been taken both *de me et a me*, conform to clauses in a disposition for that effect, was presumed to confirm the infeftment *a me*, to make the right public, and he was preferred to the casualties ; and the base superior was not found liable to enter the vassal conform to his obligation in the disposition.

Fol. Dic. v. 1. p. 193. Harcarse, (INFESTMENT.) No 609. p. 170.

No 8.

Found in conformity with No 7.

1688. *February 15.* LORD CHANCELLOR *against* CHARLES BROWN.

UPON the death of Robert Brown, who had an improper wadset of Gleg-horn's lands, affected with a back-tack, there was a process raised at the instance of the King's donatar of ward, for mails and duties of the land since the ward, and a liquidation of the heir's marriage.

Alleged for the defender, *imo*, Robert Brown was not the King's vassal, in so far as the wadset was to be holden *a me* or *de me*, and the confirmation being