

No 24. not bound to look farther back than the last investiture. It is true, John's service as heir to his father, doth evince that the father was infeft, but not that his infeftment was conceived in favour of heirs-male. Nor is it necessary to be concluded, that sasine followed on the foresaid charter; for Sir William might afterwards, changing his mind, have provided his estate to heirs whatsoever, and been infeft accordingly; which probably he did, because, had a sasine upon that charter been produced to the inquest who served his son, they would certainly have served him heir-male.

Answered for the defender; That Sir William was infeft, cannot be controverted by the pursuer, whose title depends also upon his sasine; and the serving John Maxwell, (who was both heir-male and heir of line,) lawful and nearest heir indefinitely, must be understood *applicando* to the pursuer's sasine, otherwise the inquest should be guilty of perjury, *qui jurati dicunt, &c.* Now, it is presumed, that the father's infeftment proceeded upon the charter to heirs-male, until the contrary be instructed; and though the sasine upon such a charter had been laid before the inquest, they might have served John Maxwell lawful nearest heir to his father, since that might be applied to the father's charter.

THE LORDS sustained the defender's objection against the pursuer's title, and found the charter sufficient without the sasine to instruct and prove it; no right to heirs whatsoever being *in campo*.

Forbes, p. 569.

1726. *January 26.*

MARQUIS of CLYDESDALE *against* EARL of DUNDONALD.

No 25.

AN apparent heir, by serving heir to another heir, and passing by an intermediate heir, maker of a gratuitous bond of tailzie, was found not obliged, by the act of Parliament 1695, to fulfil that bond.

See the particulars, No 3. p. 1274.

1743. *June 10.* — *against* The EARL of LAUDERDALE.

No 26.

An heir of entail, in a state of apparen-
cy, exercised a facult-
ty to contract
debt to a cer-
tain extent.
It was found
competent to
his creditors
to adjudge his

IN 1682, John Duke of Lauderdale executed a deed of entail in favour of himself, and the heirs-male of his body; whom failing, in favour of his brother Charles, in liferent, and Richard, the son of Charles, in fee, &c. The entail contained the common irritant clauses, *de non alienando, et non contrabendo*; and also, that all adjudications should be purged within seven years; the irritancy on which last clause is declared to be effectual, not only against the contravener, but against the heirs of his body. The entail gives a power to the heirs to contract debt to the extent of L. 40,000 Scots; and it likewise obliges