

1686. *March.*                      DAVID DEWAR *against* MARGARET WOOD.

No 18.

IN a competition between the wife of an appriser infest by him in annualrent of the apprised lands, and a posterior adjudger of his right, it was *alleged* for the adjudger, That his adjudication was the first formal diligence, seeing the husband who was not infest, could not infest his wife.

*Answered* for the wife; That infestment *ipso facto* carried all the personal right the husband had to the subject, and had the effect of an assignation; and the right of the apprising was transmissible by assignation.

THE LORDS sustained the answer, and preferred the wife.

*Fol. Dic. v. 1. p. 423. Harcarse, (COMPRISINGS.) No 320. p. 78.*

1710. *December 19.*                      ERSKINE *against* HAMILTON.

No 19.

AN infestment of annualrent containing procuratory of resignation, and assignation to the mails and duties, granted by a debtor who had no more in his person but a disposition to an apprising of the lands, was found to be an implied conveyance of that disposition, so as to exclude a posterior formal conveyance of the same disposition.

*Fol. Dic. v. 1. p. 423. Forbes.*

\* \* \* See this case, No 78, p. 2846.

1726. *February 1726.*

Competition the NEW COLLEGE of St Andrew's, with SIR ALEXANDER ANSTRUTHER'S CREDITORS.

SIR ALEXANDER ANSTRUTHER having purchased the lands of Newgrange from his brother Sir Philip. obtained from him a disposition, containing procuratory of resignation, precept of sasine &c. Thereafter he sold the same lands to Mr Patrick Haldane, and conveyed to him Sir Philip's disposition, procuratory and precept, Sir Alexander himself never having been infest. Before this sale to Mr Haldane, Sir Alexander being debtor to the New College of St Andrew's in the sum of 5000 merks, granted the College an heritable bond upon the said lands, upon which instrument of sasine followed, and decret of pointing the ground, even before the minute of sale with Mr Haldane. Several of Sir Alexander's creditors, after the sale, having arrested the price in Mr Haldane's hands, he suspended upon double distress, upon which there arose a competition betwixt the College and the arresters.

No 20.

Infestment of annualrent, granted by one having a disposition to lands without infestment, whether the disposition is thereby carried, debated, but not determined.