

1770. July 20. THOMAS FINDLAY *against* THOMAS MORGAN.

SERVICE OF HEIRS.

An infestment taken upon a Precept of *Clare Constat*, to the next Heir of the person last seized in liferent, and to his Son in fee, erroneous; and an adjudication laid against the Son, as vested in the estate upon that title, reduced.

[*Faculty Collection*, V. p. 92; *Dictionary*, 14,480.]

COALSTON. The interlocutor is agreeable to the feudal law, and to the noted case of *Landales*.

AUCHINLECK. My doubt is as to what has not been urged by the Lord Ordinary, that the infestment, 1709, however erroneous, is now secured by prescription.

On the 20th July 1770, "The Lords found that the infestment upon the precept 1709 was erroneous;" adhering to Lord Kaimes's interlocutor: but remitted to the Ordinary to hear parties as to prescription.

Act. R. M'Queen. *Alt.* A. Wight.

1770. July 24. ROBERT SCOTT of Logie *against* MRS MARGARET SCOTT.

PRESUMPTION—HUSBAND AND WIFE.

Donatio inter virum et uxorem, and implied revocation thereof by a posterior deed.

[*Fac. Coll.*, V. 95; *Dictionary*, 11,367.]

HAILES. The defender makes a merit of two things: *first*, That she induced her husband to settle his estate on the pursuer: this was a matter in which she had no business to meddle. *Secondly*, That she did not abstract the deeds in her husband's repositories: this was a matter wherein, if she had acted otherwise, she might have been set on the pillory. I do not see any delivery at all, or any proper donation. Logie amused himself in making deeds,—while undelivered, they were nothing. It would be dangerous to say, that, when a donation is executed by a husband to a wife, the husband's repositories are to be considered as the wife's repositories; for this would be to make a *donatio inter virum et uxorem* necessarily delivered whenever made.

AUCHINLECK. The defunct has been very uxorious. Some of the deeds executed by him were most irrational, particularly the liferent which he granted of the mansion-house. When he came to make a final settlement, he assigned the maills and duties to his disponee, and he reserved certain settlements in his