

was but a personal disposition; Stair, Lib. 3. Tit. 5. § 6. and § 25; Bankton, Lib. 3. Tit. 5. § 88; July 23, 1675, Lamington against Muir, No. 45. p. 4252. February 4, 1680, Robertson against Preston, No. 4. p. 14357. If, therefore, the fee of these lands was properly established in James Livingston, without a service, the pursuer's service, as heir of tailzie and provision to the Countess of Findlater, is inept, and can never give a title to challenge the right derived from James Livingston, the person last vested in the fee.

Answered for the pursuer: The Countess of Findlater, at the time of her death, was the only fiar and proprietor of these lands. The fee still remained with her after the tailzie; and James Livingston is only called to the succession upon her death. It is impossible, therefore, that she could be denuded of this fee upon her decease, without a service; *Mortuus nunquam sasit vivum*. If a property is once vested, it cannot be transmitted, either from the "living" or from the "dead," but by a document in writ. The security of our records depends upon the strict observance of this rule. A *nominatim* substitution is allowed to supply the place of a confirmation in personal bonds; but it will not supply the want of a service in land-rights, whether completed by infeftment or not; Dirleton, p. 149. Tit. Heirs of Provision, and, Substitute; Dict. Decis. Tit. Service and Confirmation, Sect. 2. James Livingston, therefore, without being served heir to the Countess, had no title to execute either procuratory or precept. He could only take the lands as heir-substitute to the Countess, the proprietor thereof; and it is against all the principles of law, to maintain, that an heir-substitute in lands, though *nominatim*, can be vested in the estate *ipso jure*, without a service; and consequently there was nothing in James Livingston's person which could be taken by a service, as he did not connect his title to the fee that was in the Countess; and which therefore remained in her *hereditas jacens*, until it was transmitted to the pursuer by his general service, and is now fully vested in him by his infeftment.

The Lords repelled the objection, and found, that the pursuer had a sufficient title to force production of all deeds granted by the Countess of Findlater to James Livingston.

Act. *Ferguson*.

Alt. *And. Pringle, Lockhart*.

Clerk, *Forbes*.

G. C.

Fac. Coll. No. 23. p. 38.

1757. December 1. GORDON against MAITLAND.

No. 39.

A creditor in debts affecting an entailed estate, having himself succeeded to the estate as heir of entail, the Lords found, That the debts were not extinguished *confusione*, but that after his death his heirs whatsoever could pursue for them against the succeeding heir of entail.

Fol. Dic. v. 4. p. 344. Fac. Coll.

* * This case, in which there are other particulars relative to entails, is No. 359. p. 11164. *voce* PRESCRIPTION.