

No 73.

only a security to Patrick Wood for the price of the redemption, could not be vassal; but the true vassal was Sir John Blackadder, against whom the apprising was led; and after him Henderson, whose apprising and infestment thereon came into the person of the Earl of Kincardine by resignation, charter, and sasine, *anno* 1676. *2do*, The words of the Earl's charter 1663, expressly discharge all casualties of marriage formerly fallen, and the change of the holding hindered any to fall thereafter; so that there is a difference betwixt the case of the Lord Hatton, 1672, and this, which could not pass of course, because of the change of the holding. Besides, Hatton's gift was of the marriage of my Lord Dundee, upon whose resignation, Northesk stood infest; whereas the defender founds on a gift of the marriage of those from whom the Earl of Kincardine derived no right: And it is much easier for parties to inquire into the state of their own author's rights, than of other separate collateral conveyances. But after all, the decision 1672 was singular, and wants a precedent.

*Fol. Dic. v. 1. p. 437. Forbes, p. 661.*

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S E C T. XII.

Charter of Resignation. Right of Reversion in the Superior's Person not hurt by Confirmation; nor does it bar Reduction *ex capite Inhibitionis*.

1635. March 20.

BISHOP OF GLASGOW against MAULD.

No 74.

A superior granted to a vassal a right of lands, under reversion. The vassal disposed the lands, without mentioning the reversion. This disposition was confirmed by the superior. Found that the last disposition was still subject to the reversion.

THE Bishop of Glasgow, pursuing redemption of the lands of Guidlie, against Robert Mauld, which lands were annailzied to umquhile James Durham of Ardestie, by umquhile David Earl of Crawford, and to whom the said umquhile James granted back a reversion, in *anno* 1575, to which reversion the said Bishop of Glasgow is made assignee by progress, and the said umquhile James Durham acquirer of the said heritable right, and granter back of the reversion, disposes the said lands to umquhile Andrew Mauld, father to this defender, to be holden of the Earl Crawford, his superior; in the which disposition and infestment, there is no mention of any reversion, but the same is made purely and simply, without reversion; likeas, the said Earl, to whom the alledged right of reversion was granted, by his confirmation, has confirmed to the said umquhile Andrew Mauld the said charter *ad longum*, without any provision, reversion, or reservation; in respect whereof, the defender alledged, that he ought to bruik the lands irredeemably, seeing this confirmation is done long before the right of this alledged reversion was established by the Earl of Crawford, in any of the pursuer's authors persons. And it being *replied*, That James Durham could give no more right to the defender's father than he had

himself, so that his own right being subject to the reversion, the right made by him to another must be alike affected also therewith; and, as to the Earl's confirmation, that cannot derogate to the preceding reversion, which cannot be taken away, but by some direct and express deed, when it is so convened on betwixt parties treating specially for that end; and it cannot be extinguished by this indirect deed of a confirmation, *quæ nihil novi juris tribuit*; and it being *duplied*, That, albeit Durham could give no otherwise his right than he had it himself, yet he and the Earl might together give it, and transmit the same to another, and in a better condition than he had it, and which he has done, and the Earl has allowed; for, *confirmatio ejus, qui dare potuit, est nova datio*; and, if the said Durham had resigned the lands in the Earl's hands, and that the Earl had thereafter disposed the same, without mention of any reversion to the defender, or his father, *eo casu* they would have bruik'd the lands irredeemably, even sicklike by this confirmation of an heritable right, not mentioning reversion; and, as if a vassal holding ward, had disposed the lands to another, to be holden of the superior blench, the superior confirming that blench holding, could never thereafter claim the casualty of any ward, in case any had thereafter fallen, even so in this case; for this is not as if the superior had confirmed an irredeemable right, granted by the vassal, to be holden of the vassal's self, *quo casu* the superior would never have been prejudged; but this being a confirmation of a right, granted in such a manner, to be holden of the superior, must be of the same force, as if originally the superior himself had granted it, in that same tenor; for thereby he has expressly allowed all contained in that charter confirmed, and the whole articles thereof, and has made no provision, nor reservation therein, and so it must have full force, as it bears, both against himself, who would have ever been excluded by his own deed, if he had pursued the like cause, and, by necessary consequence, must sicklike meet this pursuer, having right from him; this alledgeance and duply was repelled, and the reversion found to be entire, unprejudged by this confirmation; for the right confirmed was found to be affected with this reversion, even as his right was, who disposed it.

Clerk, *Gibson*.

*Fol. Dic. v. 1. p. 438. Durie, p. 762.*

1673. November 28.

The LORD FORBES *against* GARRIOCH.

IN a reduction of a right made to Garrioch of the lands of Arballoch, upon an inhibition at the late Lord Forbes his instance, against Garrioch's author, it was *alleged*, That this Lord Forbes could not reduce *ex capite inhibitionis*, he having confirmed the right of wadset, now craved to be reduced, and entered Garrioch his vassal in the said lands. It was *replied*, That the confirmation by the superior, being only a thing in common course, did not pre-

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A charter of confirmation, granted to a new vassal, does not prevent the superior as creditor to the former vassal, to reduce the dis-