

1713. February 12. COLONEL ERSKINE *against* SIR GEORGE HAMILTON.

IN the competition betwixt Colonel Erskine and Sir George Hamilton, mentioned *supra*, February 8. 1709, No 68. p. 2827.; Sir George having now founded upon a decret of adjudication led against the said estate in the year 1680, by Sir Robert Miln his author, for the modified avails of the wards and marriages of three successive heirs of Duncan Lindsay, gifted to James Loch, and by him transferred to the adjudger, the LORDS found, That Duncan Lindsay being denuded by the registered disposition of the apprising within the legal in favours of Patrick Wood the reverser, no casualty out of the lands appraised fell by his death; and that the Earl of Kincardine, Colonel Erskine's author, having, in the year 1663, long prior to the gift, obtained from the King a charter containing a *novodamus* and change of the holding from ward to blench, with the words, *non obstante quod eadem terræ per servitium wardæ et relevii antea tenebantur, quam tentionem et omne beneficium ejusdem nos in perpetuum renunciamus et exoneramus*; the said charter did import a discharge of these casualties, albeit they had fallen.

Albeit it was *alleged* for Sir George Hamilton, *imo*, That Duncan Lindsay (who stood in the fee with respect to the superior) was in this case vassal, notwithstanding his disposition to Patrick Wood, who was not thereby vassal, though he had *jus ad rem*. Nor yet was Sir John Blackadder vassal, *quoad* whom the apprising and the infestment thereon was in the same state as before the disposition. The act of Parliament establishing the register of reversions doth not concern the superior's right, which cannot be altered by any deed of the vassal, registered or not, without his own concurrence in acknowledging the disposition by granting a charter or otherways. *2do*, The general clause in the *novodamus* granted by the King, cannot extend against his Majesty to any casualty of the superiority, except such as are particularly expressed, *Stair Instit. lib. 2. tit. 3. § 15.* July 17. 1672. Lord Hatton *contra* Earl of Northesk, No 70. p. 6506.; and the casualty of marriage is not expressed in the Earl of Kincardine's charter.

In respect it was *answered* for Colonel Erskine, *imo*, The registration of Duncan Lindsay's disposition of the apprising to Patrick Wood within the legal, sufficiently expressed his intention never to make use of the right disposed as a real right to carry the property of the land; for payments by intromission or otherways naturally extinguish an apprising during the legal, which, till that be expired, is but a *pignus prætorium*; and Patrick Wood, coming in Sir John Blackadder's right by the disposition, had the same right to redeem as he had. An appriser of lands is not vassal to the superior thereof, if the apprising happen to be redeemed within the legal; for such a redemption removes all effects of the apprising *retro*, as if it had never been led; so that Lindsay, whose right was extinguished, or at least became

No 73.

A charter of ward lands from the Crown, containing a *novodamus*, with a change of the holding from ward to blench, with these words, *non obstante quod eadem terræ per servitium wardæ et relevii antea tenebantur, quam tentionem et omne beneficium ejusdem nos in perpetuum renunciamus et exoneramus*, was found to import a discharge of the bygone casualties of ward.

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.*

---



---

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