

ders infeftments produced.—It was *duplicated* for the defender, That the infeftment granted to the said David Evin is no original infeftment, but bears to be granted on his mother's resignation, and has no special *reddendo*, but only relative to the former infeftments; and therefore, unless the former infeftments were produced, or it were instructed, that the resigner had right, the infeftment upon resignation can operate nothing, especially never being clad with possession, as to the threaves of oats in question; for there is great odds betwixt infeftments granted by kirkmen, who are but administrators of the benefices, and others who have *plenum dominium*; so that infeftments upon resignation of kirkmen are to be understood to confer no more right than the resigner had, and not to constitute any original right where there was none before; in the same way as infeftments granted by the King, upon resignation, are but *periculo petentis*, and give no right further than the resigner had, even against the King.—It was *answered* for the pursuer, That his reply stands relevant, and he produces sufficiently to instruct his predecessor's right; for there is no law nor reason to compel parties to produce the old original feus granted by kirkmen, but infeftments upon resignation are sufficient; neither is the case alike as to the King and kirkmen, because things pass not by the King *ex certa scientia*, which no other can pretend; but in this case, declaring a right granted by an Abbot, with consent of the Convent, it must be considered what made a right the time that it was granted, when there was no more required than his concession, with consent foresaid, which is sufficient against him and his successors; neither can they pretend that such grants are *salvo jure suo*; and if in matters so ancient, original infeftments from kirkmen behoved to be produced, that neither precepts of clare constat, nor infeftments upon resignation were sufficient; few rights of kirklands in Scotland would be found valid.

The Lords repelled the defence, in respect of the reply, and found this infeftment upon resignation sufficient.

*Fol. Dic. v. 1. p. 183. Stair, v. 1. p. 338.*

CREDITORS OF LANGTON *against* LADY MARY KENNEDY.

FOUND that in a competition between charters of resignation and confirmation past in Exchequer, and sealed the same day, the charter of confirmation is preferable to the charter of resignation, the latter being complete by sasine, and the former incomplete till sasine thereon.

*Fol. Dic. v. 1. p. 183. Harcarse, (INFESTMENT.) No 524. p. 172.*