

## No 9.

A purchaser of lands charged the seller to purge infeftments of annualrent on these lands. The Lords found the infeftments holden base of the grantor, might be sufficiently extinguished by resigning *ad remanentiam* in the seller's hands, who was the superior, and registering the same; but *quoad* the confirmed ones, found, that the confirmation made them public, tho' the sasine did not specially relate to the charter or holding *a me*, but was indefinite.

1699. July 25.

OLIPHANT *against* LINDSAY.

OLIPHANT of Williamston having charged James Lindsay of Dowhill to purge sundry infeftments of annualrent on the lands of Kinloch sold to him, conform to a clause in his disposition; and Dowhill producing renunciations thereof; and it being *objected*, That they were null for want of the registration within 60 days, conform to the act 1617.—*Answered*, They contained procuratories of resignation *ad remanentiam*, and they yet resigning, it would perfect the right and secure the singular successor.—*Replied*, *imo*, The act 1669, anent registering resignations *ad remanentiam*, concerned only resignations of the property of lands, but not infeftments of annualrents; *2do*, Some of these infeftments are held base, and others of them confirmed. *Quoad* the *first*, The grantor being denuded, they could not resign for consolidation in his hands, seeing he neither had property nor superiority; and as to those confirmed, the King became superior, and there was no way to extinguish them but by getting new renunciations from such of the creditors annualrenters as were alive, and by pursuing the heirs of those who were dead to renew them, and on their renouncing, to adjudge.—*Duplied*, As for the base infeftments, resigning in Dowhill's hands will make them accesse to Williamston, the purchaser; and for the confirmed ones, they are not public, seeing the precept bore the two holdings, either *a me* or *de me*, and the sasine not applying it specifically to any, but indefinitely to both, it only secures against recognition and forfeiture; and it were a vast expense to put them to denude the heirs of the deceased annualrenters.—THE LORDS found, as to the infeftments held base of the grantor, they may be sufficiently extinguished by resigning *ad remanentiam* in Dowhill's hands, and registering the same; but *quoad* the confirmed ones, the LORDS found the confirmation made them public, though the sasine did not specially relate to the charter or holding *a me*, but was indefinite, as has oft been found, particularly 15th July 1680, Bishop of Aberdeen *contra* the Viscount of Kenmuir, No 6. p. 3011. But another point occurred to the Lords, whether a simple discharge or renunciation of an infeftment of annualrent, though not registrate, does not extinguish the said infeftment; seeing these annualrents can be paid and taken away by intromission with the rents of the lands, or by compensation; which point, as being new, the LORDS resolved to hear in their own presence.

*Fol. Dic. v. 1. p. 193. Fountainhall, v. 2. p. 64.*

## SECT. III.

Confirmation of the Radical Right, whether it Validates all the Branches.

1635. December 4. L. CRAIGIVAR and his DONATAR *against* AIKENHEAD.

## No 10.

Confirmation of a charter, granted to a

THE Laird of Craigivar and his donatar craving declarator upon the liferent of Mr Adam Bothwell, of the lands of Glencorss, whereof Craigivar, as succeed-

ing in the Lord of Salton's right, of whom these lands were holden, was superior; in which process, Mr James Aikenhead, as donatar to the King of the same liferent, seeking special declarator thereon, compeared, and opposed against this declarator of Craigivar's, who claimed the same as pertaining to him as superior, and that the King had no right thereto, by reason that Mr John Abernethy was vassal of these lands to the Lord Salton, and proprietor thereof, which Mr John had disposed the same to umquhile Adam Bothwell, father to the said Mr Adam, and to the said Mr Adam heritably, by two infeftments, one to be holden of the said Mr John, and the other of his superior, (which infeftment granted to be holden of the superior, was not confirmed,) by the which charter subscribed by the said Mr John, granted to be holden of Mr John's superior, (viz. the Lord Salton, in whose place Craigivar hath come,) the said Craigivar and his donatar *alleged*, That the said Mr John's right to the casualty of liferent, was altogether excluded, and did cease, seeing he was denuded of all right which he had, both to the property and superiority of these lands; likeas the said Adam, and Mr Adam his son, who had acquired the said right, as said is, disposed the lands heritably to Adam Bothwell, son to the said Mr Adam, to be holden of the superior, with reservation of the said Adam, and his son Mr Adam, father to the youngest Adam, their liferent, which charter was confirmed by Craigivar; within three days, after the said Mr Adam, whose liferent was reserved, was put to the horn, and so long before he was year and day rebel; by the which confirmation, bearing the said reservation, and by the remaining of the liferenter year and day thereafter rebel, the liferent of these lands so reserved pertained to him as superior; and Mr James Aikenhead, donatar to the King of the said liferent, *alleging*, That the same pertained to the King's donatar, and could not pertain to any other superior, because Mr Adam was never vassal to Craigivar, neither by any original right nor resignation, nor by confirmation; and that confirmation of the right granted by Mr Adam to his son, confirmed by Craigivar, bearing the reservation of Mr Adam's liferent, cannot be sustained to make Mr Adam his vassal, except he had been his vassal before that charter confirmed, which cannot be shown; seeing by the contrary he was vassal only to the said Mr John Abernethy, and held of him; and whatever reservation of his liferent was made in the charter granted to his son, heritably to be holden of the superior, and which was confirmed by the superior, that cannot make him his superior; seeing his liferent was not constituted by that reservation, but was lawful and sufficient of before; and that reservation was only an exception annexed to his son's fee, with which it was affected, and transmits no right of superiority over his liferent, but only to the property given to the son, to be holden of that superior. And albeit it might be alleged that his liferent would not fall to Mr John Abernethy, his proper superior, in respect that he might be alleged to be denuded of all right competent to him by the charter, granted to be holden of Mr John's superior; yet the same accresceth to the King, seeing there was no other superior *ratione coronæ*, whereby he is

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son to be holden of the superior, was found a virtual confirmation of a liferent reserved to the father in the charter; and the father's liferent escheat was found to belong to the subject superior, and not to the King's donatar, who contended to be preferred, as if the father's liferent was a personal right, and held of no superior.

No 10. justly reputed superior to all, when another cannot be shown.—THE LORDS repelled this allegiance, proponed for the King's donatar, and found the right of this liferent pertained to Craigivar, whom they found to be superior to this rebel, by this reservation contained in the charter granted by the father to his son, to be holden of the superior, and confirmed by him ; which reservation so made, and charter which bears the same, being confirmed, they sustained as sufficient to make him his vassal, although the rebel had right to the liferent of before, and found the superior's right not prejudged, albeit before his confirmation the liferenter was rebel some days before, and that thereby no right was acquired to the King, the superior having confirmed long before the year expired, and within a month after the date of the charter granted to the son, and so the superior was preferred to the King, and the sole reservation found enough to make him vassal.

Act. *Advocatus & Nicolson.* Alt. *Stuart & Gibson.* Clerk, *Scot.*  
*Fol. Dic. v. 1. p. 193. Durie, p. 782.*

1663. *January 15.* CAMPBELL *against* LADY KILCHATTON.

No 11.

FOUND, that a creditor confirming his author's base infeftment *ad hunc effectum* allenary, to make his own valid, confirms the relict's infeftment also, which was *in eodem corpore juris.*

*Fol. Dic. v. 1. p. 193.*

\*\*\* See The particulars of this case, No 35. p. 1302. and No 4. p. 3008.

1685. *March 17.* COLONEL MAINE *against* LADY EARLSTON.

No 12.

A PARTY before his committing perduellion, having resigned his estate in favour of himself in liferent, and his son in fee, adding this general clause, 'with and under the conditions and provisions contained in the procuratory of resignation ;' and having, in that procuratory, expressly reserved his Lady's liferent infeftment, the LORDS, in a competition betwixt her and the donatar of the forfeiture of her husband, found, That though the reservation in the public infeftment was in general terms, yet the Lady's liferent being particularly reserved in the procuratory of resignation, to which the general clause related, was equivalent to a confirmation ; and therefore preferred the Lady to the donatar.

*Fol. Dic. v. 1. p. 193.*

\*\*\* See The particulars of this case by Fountainhall, *voce* BASE INFESTMENT, No 39. p. 1308.