

1631. February 10. EARL of GALLOWAY against BURGESSES of WIGTON.

No. 9.

Found, in conformity with Aitken, No. 3. p. 16397. that union cannot be constituted by a subject, unless confirmed by the King.

Durie.

* * This case is No. 25. p. 7193. *voce* IRRITANCY.

1636. January 26. LADY BORTHWICK against KER.

No. 10.

An union was found sufficiently established by the King's confirmation of a charter, bearing a clause of union.

Durie.

* * This case is No. 28. p. 1748. *voce* BONA FIDE CONSUMPTION.

1637. June 22. LA. BLAIRQUHEN against TENANTS.

No. 11.

The La. Blairquhen, by a base right, holden of her father-in-law, who gave infestment to her and her husband, his eldest son, of all his lands, (which were *distincta tenementa*, and lay discontinuous, in divers sheriffdoms), and which were united to his goodsir by the King, in a barony called the Barony of Blairquhen, and whereby the King appointed one sasine to be taken for all the lands, at the place of ———, to serve for all the lands united, notwithstanding of the discontinuity; the said Lady being infest, as said is, base, by her father-in-law, and being seised at that same place of union which was contained and appointed in the charter of union granted by the King to her said husband's goodsir, and pursuing removing against the tenants, and the Viscount of Kenmuire compearing, and defending for certain of these lands, wherein he was infest, and quarrelling her sasine of nullity, because it was taken at the place of ———, which could not be effectual to her, but for those lands whereat it was taken, and so many of the other lands as lay contiguous thereto, and could not be extended to those lands excepted upon, which lay discontinuous, and were naturally in another sheriffdom than that sheriffdom within the which these lands whereat she was infest lay, and the union granted to her author, which designs that place for sasine to serve for all, cannot be effectual to her, and cannot grant power to her author to grant a base right (albeit his father had an union himself) to any other, with the privilege to take sasine at that place for these lands lying discontinuous, albeit the sasine was given to her of all the lands united by the first union of the King, except that

If discontinuous lands, in different shires, have been erected into one barony by the Crown, base infestment, by precept from the King's vassal, at the place appointed, is good for the whole lands.

No. 11. base right so granted had been confirmed; and the pursuer replying, That her author's union behoved to be profitable to her, seeing she was infeft in the whole lands united by the King to her author's father, and she could take sasine no otherwise but at that place, which the King, in his union, made before her right, had appointed for all the lands; for if she had done otherwise, it might have been quarrelled, as not lawfully taken, for she is infeft in the whole lands, and not in a part; whereas, if she had been infeft in some part of the lands only, and not in the whole, the question had been greater, viz. If her sasine taken for a part had been good, if the lands had lain discontinuous from that place whereat she was seised; but being in all the lands united, and the union once made and granted by the King, her author might have given her such a right, which (albeit base) is lawful, without necessity of the King's confirmation, the King having granted the same once of before to her author's father;—the allegiance, in respect of this reply, was repelled, and, in respect of the said union preceding, the sasine being of all the lands, albeit base, was sustained, without necessity of any new confirmation.

1637. July 11.—In this cause, it being further alleged, for John Inglis and the Viscount of Kenmuire, whose tenants were convened in this judgment of removing, That they were infeft in the particular lands contained in their rights by public infeftment, holden of the King, and, by virtue thereof, these eighteen or twenty years in peaceable possession; which lands lay discontinuous, from the alleged place of union 30 or 40 miles at least; and the said public infeftment flowed from Josias Stuart, who was also publicly infeft by the King, which Josias Stuart's right flowed from a right granted by this pursuer's husband to the said Josias, which husband was served heir to his goodsir, who was infeft holden of the King, and died last lawfully infeft; whereas his father, who was the author of the pursuer and her husband's conjunct infeftment, was never infeft in the lands, so that the pursuer and her said husband's infeftment of conjunct fee, being base, granted to be holden of his father, the granter, and who was never infeft himself, cannot be sustained as a valid right to remove these excipients, who were infeft by public rights, clothed with so long possession, specially in this possessory judgment, where the pursuer and her husband can never be able to allege, that their base infeftment, proceeding, as said is, *a non habente potestatem*, was ever clothed with possession of these lands excepted upon; and the pursuer answering, That her base right ought to be preferred, in respect it flows from her contract of marriage, and the said right granted to these excipients flows from her husband's right, which, albeit it be public, and flows to him as heir to his goodsir, and has no respect to his father, yet the same being so acquired by her husband, after the date of her conjunct infeftment, which the defender quarrels, it must be profitable, and accresce to her, and make her alleged base right become good to her, sicklike as if her conjunct infeftment had proceeded immediately from her husband, *quo casu* his supervening right, as heir to his goodsir, must accresce to her, *quia jus superveniens auctori*

prodest successori; and this ground holding, as in law and equity it ought, there is no necessity to allege possession, but her right is good without possession;—the Lords repelled the exception, and sustained the pursuer's right, and preferred the same to the excipients' public right, seeing they found, that the acquiring of the right by her husband, as heir to his goodsir, behoved to be profitable to her, who was infest, albeit base, before that acquisition, and the said base right was considered as if it had flowed to her from her husband's self.

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1637. *July 28.*—In this action it was further eiked by the defenders to that exception proponed before by them, that the union ought not to be respected, the lands united being distinct baronies, holden of divers superiors, viz. the one of the King, and the other of the Prince, and the union appointing the sasine to be taken upon the ground of the lands holden of the Prince to serve for the lands also holden of the King, whereas they lay 40 miles sundry, and in divers sheriffdoms, and so against nature, and which can never be sustained as a warrant to the father to grant to his son and his wife an infestment of a base holding, containing the like union, that base right never being confirmed, and neither the wife nor the husband, nor their author, ever being in possession of the lands, whereas the defenders and their authors are publicly infest, and, by virtue thereof, these eighteen years in possession, which ought to defend them from removing in this possessory judgment;—which allegiance was repelled by the Lords.

Act. *Mowat.*Alt. *Nicolson & Neilson.*Clerk, *Gibson.**Durie, p. 845, 851, 855.*

1673. *June 12.* FAA against **POURIE** and **BALMERINO.**

Lands lying in different sheriffdoms were united into one barony by a charter under the Great Seal. Sasine taken at the manor-place in one of the counties was found sufficient, which it was necessary to register only in that county.

No. 12.

Gosford.

* * * This case is No. 25. p. 9307. *voce* NONENTRY.

1686. *February.* COUNTESS OF KINCARDINE against EARL of MAR.

A few acres being bought by my Lord Kincardine from several heritors, being inclosed in one park with some of his own land, and so naturally united, a dispensation by a subject for taking sasine at one place for the whole was found sufficient, without a formal erection and union from the King.

No. 13.

Harcarse.