

words, “*shall not take effect*,” could only be in reference to a considerable tocher then contracted ; that he, being deprived thereof by the dissolution of the marriage, cannot be obliged to perform any thing that he is bound to by contract in contemplation thereof, as being *causa data causa non secuta*. But thereafter, it being offered to be proven, that the husband had gotten, by legacy, more than will satisfy *onera matrimonii*, during the time that the wife lived ; the Lords found, that he should be proportionally liable to perform the ratification in favours of the goodmother and children of the second marriage.

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1677. February 21. The BISHOP of DUMBLANE *against* FRANCIS KINLOCH of GILMERTOUN.

THE Bishop of Dumblane, being allowed to be of new heard, did of new insist against the declarator at Gilmertoun’s instance, upon this reason ;—That not only there could be no declarator upon the king’s renunciation and grant of redemption *in anno* 1650, for the reasons then adduced, founded upon the Bishops of Dumblane their constant possession, since the year 1621 that the same was mortified until the year 1638 ; as likewise during the suppression of bishops, by the Dean of the Chapel Royal ; and sinsyne, by the Bishops of Dumblane, notwithstanding of any declaration or redemption granted by the king ; but likewise, it was added, that he ought to be assoilyied from the declarator of redemption at Gilmertoun’s instance, because any right the pursuer pretended to the said annualrent was, as flowing from the Earl of Buccleugh, who had, by a gift under the Privy Seal, only *in anno* 1610, right to all reversions of the Lordship of Hailles, whereof Markle was a part, upon the forefaulture of the Earl of Bothwell ; whereas the mortification made by the king, *in anno* 1621, of the said annualrent in controversy, was founded upon another and prior right, whereby the same fell in the king’s hands,—*viz.* a gift granted under the Privy Seal, of the said reversion, *in anno* 1600, to Gilbert Gordon of Sheirns ; who, by virtue thereof, having used an order of redemption of the annualrent against Lady Anna Maitland, who had the fee of the said wadset made to Master Thomas Craig by the Earl of Bothwell, from her father ; and against Dame Jean Flemine, her mother, and John Earl of Castles, her husband ; as likewise, against John Lord Thirlestane, son to Chancellor Maitland, for his interest ; he did thereupon obtain a decret of declarator of redemption, and, in obedience thereof, all the said persons having right in the wadset, and annualrent, did renounce the same in favours of the said Mr Gilbert and the Laird of Lochinvar ; who did heritably and irredeemably possess the same until the year 1620, at which time they did dispone and resign the same in favours of John Murray of Lochmabane, who thereupon obtained a charter under the Great Seal, and was infest : which John Murray of Lochmabane having resigned the same in favours of the king *in anno* 1621, the king, by a gift under the Great Seal, did mortify the same to the Chapel Royal ; whereby the Bishops of Dumblane, as deans of the Chapel Royal, did continually possess the said annualrent, in manner foresaid, until the intending of this declarator : and, therefore, the foresaid Bishop, who was not obliged to know the whole progress of the writs of mortification, but having of late found out so clear a progress of rights, which not only were prior to Buccleugh’s

rights, which were only general of all reversions ; but was special, and clad with immemorial possession, he ought to be preferred to the annualrent, and assoilied from the pursuer's declarator.

It was ANSWERED for Francis Kinloch, That notwithstanding his right ought to be declared ; because the rights whereupon the bishop now alleges are defective, in so far as there is nothing produced to verify the resignation by Gordon of Sheirns, in favours of Murray of Lochmabane, nor the charter under the Great Seal proceeding thereupon, nor the resignation of Lochmabane in favours of King James. 2d. Before any such right, flowing from the king, upon the forfeiture of the Earl of Bothwell, the king was denuded of the said reversion, *in anno* 1591, in favours of the Duke of Lennox ; and so the right made to Gordon of Sheirns was *a non habente potestatem*.

It was REPLIED for the Bishop, That he having produced sufficiently, gifts and resignations, flowing from Gordon, as said is, upon the redemption from Lady Anna Maitland ; albeit some charters are not produced, which are in the public registers ; yet, he and his authors having continually and peaceably possessed, and the same never having been quarrelled by the Duke of Lennox, nor by Doctor Seaton, from whom the said Francis pretends to have right, since the year 1591, until of late ; that the new Bishops of Dumblane have right by presentation, it was more than sufficient to defend them in the possession of this annualrent, as a part of that benefice ; to which not only *decennalis et triennalis possessio* gives a sufficient title ; but much more having an immemorial possession, as said is, above a hundred years.

The Lords did of new consider this case, upon the foresaid allegiances and answers, and, notwithstanding of their former interlocutor, did justly assoilie the Bishop from the said declarator, and preferred him to the said annualrent, as being mortified to the deanery of the Chapel Royal ; but did only recommend to the Commissioners of the Treasury to make address to the king, for granting a precept for reparation of the said Francis some otherwise, as his majesty should think fit ; in respect the king had declared, under his royal hand, that he had received from Sir George Seaton the money due upon the wadset, which the pursuer had purchased for an onerous cause.

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1677. February 22. FRANCIS IRVINE, Brother to the LAIRD of DRUM, against
The VISCOUNTESS of FRENDRAUGHT.

IN a pursuit, at the said Francis's instance, as having right to several debts due by the said Viscountess, as intromissatrix with his goods and gear,—It was ALLEGED by the Viscountess, That she was confirmed executrix-creditrix, and her own debts would exhaust the whole inventory of the testament ; and having given in a condescendence, bearing, that, by a bond of provision in contemplation of her marriage, she is provided to four thousand merks of yearly jointure, if there should be no heirs-male of the marriage, unless she resolved not to marry, but resolved to be tutrix to her own children ; whereupon she craved, that she not being married, and being content to be tutrix to her son,