

1768. *January 16.* GEORGE SKENE of Skene, and OTHERS, *against* DAVID OGILVIE of Ascreavie, &c.

UNION.

Effect of a Clause of Union.

[*Dictionary, 8792.*]

MONBODDO. As to the *union*, there is no difference between Spence's case, and the case of Linlithgow. Tradition is necessary in transferring the dominion of lands. When there is no dispensation, this tradition must be on the lands. Whenever the union is dissolved, *sasine*, on the part of the grounds alienated, is required.

JUSTICE-CLERK. There is no question as to the power of the Crown to insert such clause of dispensation; and here there is a charter, with the common clause of dispensation. Lord Panmure might have taken *infestment* anywhere; he might also have divided his precept: if so, why could he not, by conveying the charter and precept, have entitled his assignee to take the like *infestment*, with the like advantage of the dispensing clause? *Union* is not dissolved by a personal conveyance of the charter and *infestment* as to most of the lands: nothing dissolves the union but the execution of the precept. Craig says, *si dominus consenseat*; that is,—if there is an *infestment* taken, from that moment the union is dissolved, and a new tenement arises. To the same purpose Lord Stair speaks; so also Mr Erskine. By a *sale*, he means a sale completed by *infestment*, which is a sale in the language of law; besides, here are different *infestments* to certain persons in *liferent*, and Lord Panmure in *fee*. This *infestment* is not null as to Lord Panmure. Why should it be null as to *liferenters*? How can I hold the union as subsisting with respect to the *fiar*, and yet dissolved with respect to the *liferenter*? The various cases of titles made up in this form show, that many securities rest upon this footing.

PITFOUR. What is the origin of dispensations? Law requires that *infestment* be granted on the ground of the lands. The King may unite discontinuous lands. Originally, lands were united in three ways,—by regality, barony, or tenendry. The united subjects were considered as one; consequently, one *sasine* was sufficient for one tenement. If nothing is said to the contrary in the charter, such *sasine* may be anywhere. As to the question, How is union dissolved?—whatever separates any part of the land from the jurisdiction, must dissolve the union. If the vassal grants subaltern *infestments*, still there is no dissolution; for the regality, barony, or tenendry, the *unum quid* still subsists: but, the moment that a part of the lands is sold, to be held of the Crown, so much is struck off: however, the union still remains as to the rest. Craig went too far in supposing the contrary. A dispensation is a power to take *infestment* upon different subjects, as if they were united: If the subject is divided, there is an end of the union; for a dispensation is but an adumbration

of a union. This union, by dispensation, has strong effects. If the proprietor takes infeftment upon the whole at one place, the infeftment is good; so also, if he takes infeftment by parcels, his heir may do the same thing, though the Chancery gives no dispensation as the Exchequer does. He may grant sub-feus, and may transmit the union; but, if he sells off a subject, to be held of the Crown, How can the subject be any longer united? (Craig's opinion is misunderstood: he means, if you give off a parcel which is without jurisdiction, you do not give the barony, so that the union is void.) Craig says, that a liferent does not dissolve the union. This is conveyed from a decision in Balfour, which is obscurely expressed, but means, that, when the liferent ceases, the union revives. If I could see a long constant practice contrary to principles, I would be moved with it,—I would be delicate as to what is past, and make an Act of Sederunt as to what is to come. But nothing of this nature here occurs. The only inconveniency will be, that people will be at more expense in making votes; for precepts are not split unless for the purpose of making votes.

PRESIDENT. I first thought the infeftments were not good; then I dreaded the danger to the records, from a supposed practice of granting such infeftments; but no such practice is proved. The instances given relate only to election causes. Infeftment is necessary upon the ground of the lands; so says the law. Unless the Crown dispense with this, I cannot see how the Crown's vassal can communicate the dispensation to as many persons as he pleases over separate subjects. The assigning the precept is a new thing. Wadset-rights were the invention of a great lawyer, (President Craigie;) that of splitting precepts was still later; consequently, the taking of separate infeftments upon the dispensation must be late also. It is true that a personal right will not dissolve the union: the union continues till the infeftment is taken. But then the question is, Whether is such infeftment properly taken upon the footing of dispensation, or is it null as taken upon the footing of the dispensation? If the lands are discontinuous, or if the tenements are separated, the infeftment will not be good. There is no longer any *totum quid*.

COALSTON. The present question is occasioned by the custom of splitting precepts. It is fit to inquire as to the legality of this practice. It is new. It is only used in the creating of votes. I would not set it aside for the time past; but I would wish to see an Act of Sederunt for preventing it in time to come.

“The Lords sustained the objection, founded on the nullity of infeftment, by virtue of the dispensation.”

AUCHINLECK. As to the infeftment in the mill, by the symbol of earth and stone, when a part is lopt off, there is no longer any union as to that part. In this case there is a mill, without infeftment by the symbols of clap and happer, but with the symbols of earth and stone; and it is said, that the dispensation bears, that symbols of earth and stone shall be sufficient: and this is well said, for this part of the dispensation relates not to the union, and it subsists although the union be dissolved. The King's grant is the warrant of the infeftment; and it allows infeftment to be taken by the symbols of earth and stone.

KAIMES. In this cause, the only difficulty was, that union could not be dissolved till infeftment was taken; and, consequently, that though the infeftment dissolved the union, yet that it was good, in terms of the dispensation contained in the union. My answer is, that the personal disposition divests, for that the disponent could not take infeftment upon the lands disponent. But, as to the mill, there is no difficulty, for the King cannot dispense with the accustomed symbols.

AUCHINLECK. The power of the King cannot be doubted; for there is practice and innumerable examples.

PITFOUR. I think, that, if the dispensation as to the union ceases, the dispensation as to symbols ceases also.

GARDENSTON. If you say that the dispensation is still good as to the symbols, why not also good as to discontinuous lands?

COALSTON. Where tenements are discontinuous, and where the contiguous subjects are of separate natures, there must be separate infeftments. The Crown may make discontinuous tenements to be one, or may make one symbol serve for another; but, when once there is a disunion, the liberty of taking one infeftment for many ceases, as does the liberty of using one symbol for another.

PRESIDENT. There is a dispensation both as to infeftment and as to symbols. How can the clause be divided? Here Craig's simile of the sheaf of arrows applies:—As Lord Panmure broke the union, he can derive no benefit from the clause of dispensation.

The Lords sustained the objection, that the symbols of earth and stone were used in the infeftment of the mills.

Act. H. Dundas, &c. *Alt.* A. Lockhart, &c.

1768. *February 6.* MR DAVID DICKSON *against* THOMAS, EARL of DUNDONALD, and OTHERS.

PROOF.

An extract of the sentence of a Presbytery deposing a minister, *found* not to be legal evidence of the fact; the minutes from which the extract was taken not having been signed by the moderator.

[*Faculty Collection*, 128; *Dictionary*, 7464.]

HAILES. Here are two questions:—*1st*, Whether there is evidence of the deprivation? *2d*, Whether, if there is such evidence, the Court can refuse to give it effect, by sustaining the charge for stipend. As to the *first*, We have here a formal extract of a most informal sentence. The minutes from which the extract is framed are confused, detached, blotted scraps. The sentence is at this day unsigned. It was no reason for not signing it, that the moderator