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remained in *hæreditate jacente* of her predecessor, to whom she had made up a title. He was therefore entitled to succeed to the estate, as well as to the arrears of rents unuplifted in the tenant's hands, as an accessory part of the estate. To this, it was answered, that Miss Hamilton's apparency arose from the respondent disputing her right to succeed to the estates, which she was found entitled to. That, besides, an heir apparent was entitled, before infeftment, to the rents and profits of the estate, upon which she has entered into possession.

Jan. 14, 1761. The Court of Session preferred the heir.

Against this judgment an appeal was brought.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be reversed; and it is hereby declared and adjudged, that Mrs. Eupham Hamilton, the executrix of Miss Hamilton, the last apparent heir, is preferable to Mr. Archibald Hamilton the heir, to the rents falling due during the apparency, and remaining unuplifted; and it is hereby further ordered, that the cause be remitted to the Court of Session in Scotland, to proceed therein accordingly.

For the Appellant, *Ja. Montgomery, C. Yorke.*
For the Respondent, *H. Dundas, F. Norton.*

ALEXANDER LYALL, Younger of Garden, *Appellant;*
GEORGE SKENE and WILLIAM MILNE, *Respondents.*

House of Lords, *9th Feb.* 1768.

UNION—DISPENSING CLAUSE—INFEFTMENT.—Objections were stated to a sasine, on the ground that it was not taken on the several tenements of lands—these, although originally united by a clause of union, being now discontiguous, and the union dissolved by a sale of part: Held, in the House of Lords, that the usage of granting dispensation clauses, allowing sasine to be taken on a part for the whole, was material, if established in this case, but appeal dismissed, in consequence of no evidence of the usage being adduced.

The appellant was enrolled as a freeholder in the county of Forfar, in virtue of a Crown charter of the lands of Petairlie, Guildie, and others, granted to Lord Panmure, and

assigned by him to the appellant, on the assigned precept in which he was infeft.

The respondents, under the election act 16 Geo. II., petitioned the Court of Session against this enrolment, upon the allegation that the sasine which followed on this charter was void and null, as he had not taken the infeftment on the several tenements included in his conveyance, although they lay discontiguous, but had only taken it at one part for the whole, by the symbol of earth and stone. To this it was answered by the appellant, that the lands were not discontiguous, but were united into one by a clause of union, and even although it were in point of fact true, that they were discontiguous, yet there was in his charter a dispensing clause, which sufficiently warranted the manner in which the infeftment had been taken. The dispensing clause was in these terms:—" Quod unica sasina per dictum Willielmum Comi-
" tem Panmure ejusque prædict. (that is, hæredes et assig-
" nati) super aliqua parte fund. dict. terrarum, nunc et omni
" tempore futuro per deliberationem terræ et lapidis fundi
" earundum, absque aliquo alio symbolo, sufficiens erit pro
" integris terris, baroniis, molendinis, decimis, piscationibus,
" at usque supra script. earundem parte, non obstan. quod
" discontigue jacent."

The respondents admitted that such dispensing clauses might be established by usage, and were effectual so long as the whole lands granted by the charter remained united in the same person; but whenever this union was dissolved by the sale of part, the dispensation clause came to an end, and all subsequent infeftments must be taken on each part as a separate tenement, according to law. The Court were prepared to give judgment, when the appellant petitioned the Court for further time, alleging the usage of granting such dispensing clauses, and craving time to search for instances of that usage, but the Court refused the prayer of the petition as to the usage. Jan. 14, 1768.

Against this interlocutor the present appeal was brought.

Pleaded for the Appellant.—The appellant's titles, on the face of them, vest in him the lands, under which he claims to be enrolled. They are conveyed by a charter to Lord Panmure from the crown, and the appellant is Lord Panmure's assignee. It contains a dispensation, that infeftment taken by delivery of earth and stone, upon any part, shall be good for the whole. These lands are conveyed, and the charter, with the unexecuted precept of sasine, assigned to

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the appellant, under which he has been infeft, by delivering of earth and stone upon the grounds of these very lands, and this infeftment has been taken conform to the warrant which authorized it. This union of the lands, and this dispensing clause, must mean something consistent with itself, and also consistent with its warrant, and therefore was sufficient for taking an effectual sasine in conformity therewith; and having taken infeftment on a part for the whole, it was not necessary to go to every part of the discontiguous lands, and there pass infeftment. The lands conveyed, and the charter assigned, stand good for a part as well as for the whole. The assignment of a part is as good as the assignment of the whole, the charter being equally good as a warrant of infeftment in either case.

Pleaded for the Respondents.—This appeal is merely got up for the purpose of delay. The appellant had plenty of time to search for instances of the usage among the records of Court, if he had chosen to exert himself in so doing, and the nature of the case calls for a summary disposal. Even if usage could be adduced, it could not sanction errors which go to render null the sasine which has been taken; but it would be improper, in this preliminary discussion, to go into the merits of the objection itself, as the Court of Session have not yet decided on that point.

After hearing counsel, it was

Ordered and adjudged that the usage may be very material upon the question, in this cause; but that the appellant ought to have been prepared, or shewn a satisfactory reason why he could not be prepared, to lay instances of the usage before the Court. Ordered and adjudged that the appeal be dismissed, and that the appellant do pay to the respondents £30 costs.

For the Appellant, *Ja. Montgomery, Al. Forrester.*
For the Respondents, *C. Yorke, Al. Wedderburn.*