HUGH INNES, Esq., of Lochalsh, . . *Appellant;*

The Rev. ALEXANDER DOWNIE, Minister of Lochalsh, and the Reverend the Presbytery of Lochcarron, . . } *Respondents.*

House of Lords, 20th February 1815.

EXCAMBION — TRANSACTION — HOMOLOGATION. — An action was brought thirty years after the excambion of the old glebe belonging to the minister of Lochalsh, for the lands of Ardhill belonging to Lord Seaforth, to set aside and reduce that contract, on the ground that it was gone into without due authority from Lord Seaforth. Held that the transaction having been fairly gone into, and homologated, both by the Seaforth family and the appellant, the same could not be disturbed. Affirmed in the House of Lords.

An action of reduction and declarator was raised by the appellant against the respondents, to set aside and reduce a contract of excambion, by which, about thirty years ago, the old glebe belonging to the minister of Lochalsh, was exchanged for the lands of Ardhill, then belonging to Lord Seaforth, and now, by purchase, to the appellant.

The grounds of the reduction were, 1st, That the minutes of meeting of presbytery, said to have been written when the excambion was made, were informal, vitiated, and erazed. 2d, That neither the presbytery nor Lord Seaforth's factor, with whom they transacted, could legally make such an excambion. 3d, That Lord Seaforth gave no authority for the transaction at the time, and afterwards, when it came to his knowledge, he disapproved of it, and took certain measures for setting it aside. 4th, That the same was brought about by connivance between his lordship's said factor, Farquhar M'Rae, and the then minister of Lochalsh, Mr Murdock M'Iver.

The defence stated was that the excambion was a fair transaction, and gone about in a regular way, and that, in point of fact, it had been homologated, both by the Seaforth family, and by the appellant.

The Lord Ordinary ordered a condescendence of the facts as to homologation.

The Lord Ordinary, after the condescendence was given in with answers, pronounced a special interlocutor, reducing the excambion; but, on reclaiming petition to the Court, the

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Court pronounced this interlocutor :—" Alter the interlocutor " complained of, sustain the defences, assoilzie the defenders, " and decern; find expenses due to the defenders, allow an " account to be given in, and remit to the auditor to examine " the same and report." On reclaiming petition, the Court adhered.

Against these interlocutors, the present appeal was brought.

Pleaded for the Appellant.—As to the *first* act of homologation—the alleged silence and implied acquiescence, from the time of the transaction in 1776 to the year 1780, on the part of Lord Seaforth, when he sold the property, it is a sufficient answer to say, that Lord Seaforth, or his men of business, knew nothing of the excambion, until it was first mentioned by Mr M'Iver, in the process of suspension in 1779. The excambion, therefore, was, from beginning to end, a collusive and underhand transaction. But it is stated that Lord Seaforth had homologated the excambion, in the *second* place, by building office houses on Ardhill, which office houses were erected as attached to the manse. The answer to this is, that they were built by the factor, and not by Lord Seaforth or his agent, who were ignorant of the transaction for years thereafter. The *third* act of homologation alleged, was by Mr Mackenzie, who purchased the estate in 1779, not bringing any challenge of the transaction, but, on the contrary, had, in 1780, given Mr M'Iver no less than L.100 to be laid out in repairing one of the wings of these houses so built. The answer to this is, that Mr Mackenzie was ignorant of his right, and of the nature of the transaction. The other acts of homologation are all equally unfounded, and, therefore, the interlocutors ought be reversed.

Pleaded for the Respondents.—The excambion called in question by the appellant was regularly entered into about thirty years ago by the minister of the parish, with the consent of the presbytery on the one hand, and Mr M'Rae, factor for Lord Seaforth, on the other hand. 2d, At such a distance of time, the respondents cannot be called upon to produce the powers which Mr M'Rae received from Lord Seaforth, to enter into the transaction, but these powers must now be presumed to have been to the effect spoken of. 3d, Mr M'Iver, who was minister at the time the excambion was entered into, entered into possession of the new glebe of Ardhill, and he and his successors have remained in possession of it ever since ; and the Earl of Seaforth immediately entered into possession by his tenants, of the old glebe of Kirkton,

and his lordship and his successors in the estate of Lochalsh, have continued in possession of it ever since. 4th, The transaction of the excambion was homologated in many different ways, by the acts of the Earl of Seaforth, of the present Lord Seaforth, and of the appellant himself, and their respective agents, and, in consequence of such acts of homologation, the original transaction cannot now be challenged.

After hearing counsel,

It was ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellant, *William Adam, Thos. W. Baird.*

For the Respondents, *Sir Saml. Romilly, John Connell.*

ALEXANDER PORTERFIELD of Porterfield, Esq., *Appellant.*

THE OFFICERS OF STATE and ALEXANDER DON, Esq., of Ochiltree, Titular of the Parish of Kilmacolm, The Right Honourable WILLIAM, LORD BELHAVEN, and Others, Heritors of the said Parish, } *Respondents.*

House of Lords, 24th February 1815.

LOCALITY—RIGHT TO TEINDS.—Circumstances in which it was held that an heritor had adduced sufficient title and right to the teinds of his lands, although in a former locality he had been localled in consequence of these titles having gone amissing. In the House of Lords the case remitted.

This was a question as to whether the appellant had a right to the teinds of his lands.

It appeared that in a locality of the teinds of the parish, after the minister had obtained an augmentation in 1758, his title-deeds and writings had been duly produced by the appellant's father, and in that locality effect was given to his right then produced.

In 1795, the appellant's father died; and in 1798 the minister of Kilmacolm raised a new process of augmentation, which he obtained accordingly. And when the usual locality which followed was prepared, it appeared that the appellant was localled on as having no right to his teinds. He therefore objected; but his title-deeds, by which he proved, on the