# PRESUMPTION.

## DIVISION I.

## Presumed Alteration and Revocation.

1569. *January* 11. & *February* 10. MAXTON *against* MAXTON.

No 1.
A person being infeft by resignation on a tailzie, and afterwards taking a new infeftment, without mentioning the tailzie, was found thereby presumed to have broken it.

IN an action of reduction of a retour moved by Alexander Maxton in Perth, against the inquest, against John Maxton his brother, desiring the retour to be reduced, whereby the said John, served and retoured in a tenement of land in Perth, as heir to his umquhile brother, Mr Patrick Maxton, who died last vest and seased in the same; because the said Alexander Maxton, younger brother to the said Mr Patrick, showed an instrument of sasine, whereby he was seased in the said tenement by resignation in the Bailies' hands, at which time the said John showed to the said inquest the redemption of the same, and renunciation of the said Alexander, whereby the said Mr Patrick stood only seased therein the time of his decease; whereto it was *answered*, That by the said renunciation of Alexander, the said Mr Patrick could not be seased, and therefore the inquest had committed error. It was *answered*, That albeit *in prædiis urbanis*, it was necessary to take new sasine after the redemption, yet in burghs it was not requisite. THE LORDS found by interlocutor, That albeit when a man analzies land to be holden of himself, he needs not to take new sasine after redemption, because he remains still in the superiority, *et proprietas facile ad suam reducitur naturam*; nevertheless, whensoever the land analzied is holden of the superior, the redeemer must be newly seased, except the same be taken holden of the superior by comprising; for in that case, the owner redeeming within seven years needs no new sasine; because the law makes him, and presumes him to remain still seased, if he happen to redeem within the term of law; and therefore decerned the inquest to have committed error simply, but not wilful error; because it was *alleged* by the inquest, That they had letters delivered by the Lords to serve the said John, notwithstanding the said

No 1. objection; which letters, because they were given without cognition in the cause, were not sufficient to warrant the inquest simply, but from wilful error.

In the action of reduction foresaid it was libelled, That the inquest had erred in it, because the said Alexander Maxton showed to the said inquest the time of the serving of the brieves foresaid, an instrument of resignation, wherein was contained, that umquhile John Maxton, and Elizabeth Tod his spouse, father and mother to the said umquhile Mr Patrick, and to the pursuer and to the defender, resigned the said tenement in the Bailies' hands of Perth, in favour of the said Mr Patrick; and failing of him, to the said Alexander, his brother; and therefore the said inquest serving the said John Maxton, elder brother, as heir to the said umquhile Mr Patrick, knowing that diverse others had title to the said lands and tenement, bought their titles; and judging their titles to be good, caused them resign their rights, and thereon took new sasines, wherein there was no tailzie, and therefore the said Mr Patrick broke the first tailzie. It was *replied*, That the said tenement being once resigned in favour of the said Mr Patrick, and he, by virtue thereof, being seased thereintil, was *dominus tenementi, et quod semel meum, amplius meum non potest fieri, quia non sicut pluribus modis rem possidere possumus, ita ex pluribus causis res potest nostra fieri, L* 3. *D. De adquirenda vel amittenda possessione.* It was *answered*, That seeing it was uncertain with which of the titles the said Mr Peter bruiked the said tenement, it was to be presumed, that taking a new sasine by virtue of a new title, he disceded from the first, and took him to the last; and the last being without any tailzie, the tailzie was broken by the new sasine. The Lords found by interlocutor, That the inquest did wrong, and absolved them from that reason, and found that by new sasines the first tailzie was broken.

*Fol. Dic. v.* 2. *p.* 134. *Maitland, MS. p.* 217.

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No 2. 1586. Seaton *against* Seaton.

A donation *mortis causa* cannot be taken away by the subsequent escheat of the granter.

*Fol. Dic. v.* 2 *p.* 115.

*** Lord Kames in his Dictionary refers to this case as being in Colvil; but no such case has been found in that MS. See Appendix.

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No 3. 1607. *February* 4. Marjoribanks *against* Mellerstains.

In the removing pursued by Joseph Marjoribanks against the Lady Mellerstains, she *excepted*, That she had infeftment in conjunct-fee of the said lands given to her by her husband *in anno* 1587. It was *answered*, It was null, be-