

SECT. V.

Competition among Rights Confirmed.

No 18.

In a case of double alienation of lands, the first being to a bride, *secundum tenorem chartæ conficiendæ*, the last, though posterior, having obtained the first confirmation from the superior, the Lords preferred the same, and found that the date of the other confirmation could not be drawn back to the date of the alienation.

1580. July 13.

LADY POLMAISE *against* TENANTS.

THE Lady Polmaise Murray wairnit certain tenants to flit and remove fra certain lands. It was *alleged* be the tenants, That they aught not to flit; because, before the wairning, they were infest and seased in the lands, and be virtue thereof were in possession of the same. To this was *answered*, That, notwithstanding of their infestment, they aught to flit and remove; because she, before their infestments, was seased in the lands be her husband in the time of her virginity *et e contemplatione futuri matrimonii*, and thereafter obtained confirmation of the same; and so her husband denuded himself, first by seasing of her in the land, *secundum tenorem chartæ conficiendæ*, had no power thereafter to infest or sease the defenders in the said lands. To this was *answered*, That albeit she was seased before the defenders were seased, yet their exception ought to be admitted be reason of the act of Parliament made in King James the Fifth's time, anent double alienation, that where there are double alienations made to sundry persons of one land, that he that gets the last alienation *titulo oneroso*, with the first receiving of the superior, either by resignation or confirmation, and possession following thereupon, shall prevail over the first private alienation, albeit it have the priority. To this was yet *answered* be Polmaise, That her sasine that was first was not private, because it was afterwards confirmed be the superior, and she obtained infestment conform to her sasine; whilk infestment and confirmation aught to be drawn back to the time of her sasine, because the same was given *secundum tenorem chartæ conficiendæ*. To this was *answered*, That it could not be drawn back, *quia obstabat interim medius obex*, whilk was the sasine and infestment given to the defenders, and it was before the Lady's infestments confirming.—THE LORDS admitted the exception of the defenders, and that in respect of the act of Parliament, and repelled the alleageance made be the Lady.

Fol. Dic. v. i. p. 194. Colvil, MS. p. 287.

No 19.

An infestment for re-

1611. January 25.

GRAY *against* PITFERRAN.

THE Laird of Parbroath, in *anno* 1608, disponed heritably the lands Gillets, &c. to be holden of the Queen. Shortly thereafter Parbroath, by contract,