

## S E C T. XI.

Effect of *Novodamus*.

No 69.

1611. *July*. LAIRD OF COLDINGKNOWS *against* CORSBIE.

Lands being in non-entry, a gift of ward, marriage, and non-entry will not serve for the non-entry any longer than three terms after the expiring of the ward; and a particular gift of non-entry subjoined in the said gift of ward, marriage, and non-entry, for the donatar's bruiking the said gift of non-entry after the expiring of the ward, will not be sustained. An infeftment of lands, with a clause *de novodamus ratione forisfacturæ, non introitus, &c.* will not purge the bygone entries; because *hoc non agebatur* to prejudge the King of his casualty of the non-entry, but only to grant an heritable right *ad futurum*.

*Fol. Dic. v. i. p. 437. Haddington, MS. No 2287.*

1672. *July 9.*LORD HALTOUN *against* EARL NORTHESK.

No 70.

Clauses of *novodamus* in a charter from the Crown, secure the vassal against all claims which the King has to the property by forfeiture, recognition, &c. but not to any casualty of superiority not burdening the property, and therefore it was found that such a clause did not import a discharge of the casualty of marriage.

MY Lord Haltoun as donatar to the marriage of the late Earl of Dundee, pursues for the avail of the marriage. The Earl of Northesk and others having now right to the lands *allege* that the lands cannot be burdened with the avail of this marriage, they being singular successors to the Earl of Dundee, and infeft many years ago; *imo*, Because they offer them to prove that the Earl of Dundee was married before his father's death. To this it was *replied*, That if he was married before his father's death, it was by precipitation, to exclude the King his superior, and was after his father was wounded in the battle of York, in *anno* 1644, after which shortly he died, having never come abroad; as was found lately in the case of the Lord Colvill. The defender *duplied*, *imo*, That this was no precipitation because he offers to prove that there was an antecedent treaty of marriage, and proclamations before the Earl's father received his wounds, which differences the case from that of Colvill. *2do*, It is offered to be proved, that his father convalesced of his wounds, and came abroad, and played at bowls thereafter; but by an accidental fever shortly after, died.

THE LORDS finding these allegiances contrary, would prefer neither party in the probation; but before answer ordained either party to produce witnesses upon the whole matter of fact alleged.

The defender farther *alleged* absolutor, because by the act of Parliament 1640, ratified *anno* 1641, by the King then present in Parliament, the marriage of all that should happen to be due in the expedition was discharged. It was