

himself, so that his own right being subject to the reversion, the right made by him to another must be alike affected also therewith; and, as to the Earl's confirmation, that cannot derogate to the preceding reversion, which cannot be taken away, but by some direct and express deed, when it is so conveyed on betwixt parties treating specially for that end; and it cannot be extinguished by this indirect deed of a confirmation, *quæ nihil novi juris tribuit*; and it being *duplied*, That, albeit Durham could give no otherwise his right than he had it himself, yet he and the Earl might together give it, and transmit the same to another, and in a better condition than he had it, and which he has done, and the Earl has allowed; for, *confirmatio ejus, qui dare potuit, est nova datio*; and, if the said Durham had resigned the lands in the Earl's hands, and that the Earl had thereafter disposed the same, without mention of any reversion to the defender, or his father, *eo casu* they would have bruik'd the lands irredeemably, even sicklike by this confirmation of an heritable right, not mentioning reversion; and, as if a vassal holding ward, had disposed the lands to another, to be holden of the superior blench, the superior confirming that blench holding, could never thereafter claim the casualty of any ward, in case any had thereafter fallen, even so in this case; for this is not as if the superior had confirmed an irredeemable right, granted by the vassal, to be holden of the vassal's self, *quo casu* the superior would never have been prejudged; but this being a confirmation of a right, granted in such a manner, to be holden of the superior, must be of the same force, as if originally the superior himself had granted it, in that same tenor; for thereby he has expressly allowed all contained in that charter confirmed, and the whole articles thereof, and has made no provision, nor reservation therein, and so it must have full force, as it bears, both against himself, who would have ever been excluded by his own deed, if he had pursued the like cause, and, by necessary consequence, must sicklike meet this pursuer, having right from him; this alledgeance and duply was repelled, and the reversion found to be entire, unprejudged by this confirmation; for the right confirmed was found to be affected with this reversion, even as his right was, who disposed it.

Clerk, *Gibson*.

*Fol. Dic. v. 1. p. 438. Durie, p. 762.*

1673. November 28.

The LORD FORBES *against* GARRIOCH.

IN a reduction of a right made to Garrioch of the lands of Arballoch, upon an inhibition at the late Lord Forbes his instance, against Garrioch's author, it was *alleged*, That this Lord Forbes could not reduce *ex capite inhibitionis*, he having confirmed the right of wadset, now craved to be reduced, and entered Garrioch his vassal in the said lands. It was *replied*, That the confirmation by the superior, being only a thing in common course, did not pre-

No 74.

No 75.

A charter of confirmation, granted to a new vassal, does not prevent the superior as creditor to the former vassal, to reduce the dis-

No 75.  
position, in  
favour of the  
new vassal,  
*ex capite in-*  
*hibitionis.*

judge him as a lawful creditor, of any real diligence, by inhibitions against his vassal's author, as was found in the case of Lord Torphichen against Mason's Creditors, 11th July 1673, *voce* Reduction. THE LORDS did sustain the reduction, notwithstanding of the answer; and found, that a charter, upon resignation or confirmation, granted to a new vassal, did not prejudge him as a creditor to his last vassal, to reduce upon inhibition, or to make use of any real right or diligence he had used against him; but that the same might affect the right confirmed; but, if the charter of confirmation or resignation had been a *de novo damus*, it might have altered the decision.

*Fol. Dic. v. 1. p. 438. Gosford, MS. No 638. p. 370.*

No 76.

Charter of  
resignation  
from the  
Crown im-  
plies a confir-  
mation of no  
base right or  
servitude,  
though men-  
tioned in the  
charter.

1681. January 26.

EDIE against THOIRS and DUNN.

GEORGE SEATON having disposed the lands of Newark to Mr Alexander Seaton, his brother, he took infestment base, whereupon William Gordon, Sheriff-clerk of Aberdeen, took a gift of recognition from the King, and obtained declarator thereupon. William Forsyth, and Patrick Dunn his author bound in warrandice, being now heritor of the lands of Tipperty, raise reduction and improbation of the decret of declarator, and grounds thereof, in so far as might concern a servitude of a water-gang through the lands of Newark, to a mill in the lands of Tipperty, and likewise for a servitude of casting peats in a moss; the one of which servitudes was constituted by the heritor of Newark, and was enjoyed by the heritor long past prescription; the other, though constituted within prescription, yet was constituted by the King's consent, in so far as it is expressly designed in an infestment granted by the King upon a resignation, which imports the King's consent and acceptance, not only of the purchaser's fee, but of the reservation of this servitude from that purchaser's fee; whereupon Forsyth, as having good right to maintain the servitudes acquired to his lands of Tipperty, alledged that the declarator was collusive and null, for want of probation, in so far as it bears the recognition instructed only by sasines, which, being but assertions of notaries, could not prove, without production of the warrants, otherwise any notary could ruin any ward-vassal. *2<sup>do</sup>*, If need were, he offered to prove, that, if the principal sasine and warrant were produced, it would appear that the warrant was razed and vitiated; and, whereas there was only disposed an annualrent out of the land, it was made a disposition of the land, which inferred recognition, whereas, the annualrent would not. *3<sup>tio</sup>*, The recognition could not extend to any further than the returning of the fee to the King, or to the donatar, free of *majora gravamina*, such as sub-feus, or annualrents, liferents, or multures; but was never extended to *minora gravamina*, such as ways, water-gangs, fuel, &c. enjoyed by prescription; for, though donatars of ward or non-entry might exclude such small servitudes, as well as donatars of recognition, yet, though gifts of non-entry be frequent and ordinary, it was never