

Chap.
of Dispositions.

Dispositions are either Irredeemable and absolute, or Redeemable.

Tit. 1
of Irredeemable and absolute Dispositions.

An absolute Disposition, is either a single Disposition which is properly termed a Disposition; or a Mutual Disposition, which goes by the Name of a Contract Exchange.

Sec. 1

of Dispositions properly so called.

A Disposition, is a written deed by which real rights of lands and the like completed by Infeftment, are conveyed from one called the Disposer, to another termed the Dispossee. A Disposition differs from an obligation to Dispose: In that the former is the actual conveyance of the real Right per Verba de presentati; whereas the former doth only transmit a personal Right, & here upon the Grantor may be compelled to convey the Real Right. A Disposition of land containing a procuratory Resignation and precept of resignation, and assignation to all Writtes in the Grantors person written, who had only a personal Right by Disposition not clothed with Infeftment, fully denotes the Disposer without necessity of Intimation. So as the Subject cannot be thereafter adjudged from him; and the Receiver of a Disposition was preferred to an adjudger, albeit the former took Infeftment upon the procuratory and precept in the Disposition granted to him, and the adjudger was Infeft upon the procuratory and precept in the Disposition granted in favour of the Common Author by the person last Infeft 8 Decemb. 1710 Rule Contra Curiam. The Reason of this Disparity betwixt a Disposition of an heritable right whereon Infeftment hath followed, and an assignation to a Redeemable Bond, that the former denotes the Disposer, or without necessity of Infeftment or Intimation. Whereas the latter does not denote the Feudant till it is Intimated, is: Because the Land is properly Debtors to one who hath a Disposition thereof; whereas the assignation of a bond may be Intimated to the grantor who is Debtor, to put him in Credit to pay to the Creditor, but heritable rights of Lands or Annual rents cannot pass from persons Infeft thereof in Singular Successors, without Resignation or Confirmation.

The Infeftment à me, or without an Infeftment Demand: Because a Disposition containing a procuratory of Resignation and precept of Infeftment imports only a personal obligation upon the Disposer and his heirs to perfect the conveyance, and give the Receiver Possession hereupon Stair lib. 3 Tit. 2 § 8 11. for all be a Dominion or property being an Incorporal right depends upon the Will: Yet by the custom of the most civilized Nations, some kind of solemnity is required to perfect Real Rights.

Real Rights communicated by Infeftment are granted to a heritor either of the Disposer's Superior, by resignation, or confirmation, called a right à me, or a publick right; or they are given to be held of the Disposer, called a vassal holding, or a right à me. See the Supra part Book 2 Chap. 3 Tit. 3 Sec. 2.

Resignation, called Resignatio Feudalis, is made either by the Vassal himself, called Resignatio Propriae Manibus, or by one having a procuratory from him, by the symbolical Delivery of a Staff and Baston (called Staff and Baston) to the Superior or his Commissioner by him for that Effect. And Resignation made by any other symbol than Staff and Baston is null Act of Seign. 11 Feb. 1709. If the King be Superior, Resignation is made to the Warden of Exchequer. In the Year 1603 the King granted a Commission to his Privy Council of Scotland to receive Resignations, which for some years they did, and all Procuratories of Resignation bore a power to Resign in the hands of the Privy Council Act 14 Mar. 20. 16. but now Resignations can only be made in the hands of his Majesty or of the Barons of Exchequer. Albeit Seisin must be delivered upon the Ground of the Lands, Resignation may be made any where Stair lib. 3 Tit. 2 § 11. 20. Resignation is made either in favorem propriae or a Disposition to the Vassal himself and his heirs therein mentioned or to some third party and his heirs to whom the Superior or his Commissioner, in token of Acceptance, Receiver the person is made ad Perpetuam Remanentiam upon a Disposition to the Superior to Remain with him. Resignation in favorem propriae Manibus is Warranted by the Disposition it proceeds from, and such Resignations made by a procurator are authorized by a procuratory to a blank person in the Disposition or by a Proc.