

Procuratory of Resignation having the Effect of a Disposition

Where a Vassal makes Resignation and Remanentiam personally, he should subscribe the Instrument of Resignation, or a Notary for him, otherwise the Resignation is Null Act 33 Par. 6 Act 31 Par. 9 D. M. If such Resignation is made by a procurator, he must be authorized so to do, by a procuratory subscribed by the Resigner. The party in whose favour the Resignation is made, takes Instruments thereupon (called an Instrument of Resignation) In the hands of a Notary. Instrument of Resignation in favorem, want not to be Recorded. But an Instrument of Resignation ad Remanentiam, must be Recorded as Seisins within Sixty days Act 3 Par. 2 Sect. 1 Ch. 2. To put men in Mala fide to Contract with the Resigner.

Resignation is not Effectual, unless the Resigner be Infeft & lib. 2 Tit. 11 § 6 In fe. seeing he cannot be devest'd, who was never Invested. Quæritur, what is the Effect of Resignation made by him who is not Vassal with Consent to the true Vassal? As to this Question Eraly (Fend. lib. 3 Tit. 1 § 15) is only thus far clear, that a disposition by a person having no title, or one who is Devest'd, cannot be supported with the Consent of the true Owner. Tho a person Infeft upon a Putative or Colurable title, may Dispose Effectually with Consent of the proprietor. My Lord Stair (lib. 2 Tit. 11 § 7 lib. 3 Tit. 2 § 9) holds, that such a Consent to another's Resignation is sufficient, as if the Consenter had been the Resigner, whether the Resigner had a Colurable title or not; so by the true proprietor's Consent & the Consent with the Resignation simul & semel. For his subsequent Consent will not support Resignation formerly made a Non habente potestatem: nor his Consent that such a one Resign'd to, far as he has right, be of any avail to Render the Resignation Effectual. Consent of the true proprietor will support Resignation made ad non Dominos, albeit the Consent be inhibited only in the beginning of the Disposition or Contract, and not repeated in the procuratory or Instrument of Resignation: for being expressed even generally in the beginning, it reacheth every Article thereof, and all conform thereto Stair lib. 2 Tit. 11 § 7. As in the Constitution of fees, the Consent of a person having a good right renders a disposition by one not Infeft Effectual 15 Decemb. 1630 Sir Ling. Contra

Contra Tenants. Where an Infeftment of Annual rent granted by one Infeft with consent of the person Infeft, was retained to Exclude a back Infeft thereafter by the Consenter to a singular Successor, but Sir James Stewart (Anders to Dirlet. Douls. Gilt. Consensus) thinks that if the Undoubted Proprietor of Land give his Consent to a Disposition thereof by another, and thereafter disburse no right directly to one who had thereupon Infeft, the Receiver of the direct Disposition should be preferred to the person getting right only by the Proprietor's Consent the just Infeft: tho' the latter Consent were written on Record, and not the first. If there be any propriety to the husband's Creditors upon any other Land where by the demanders get payment: these annual renters were obliged to assign her to any other subject in which they were Infeft, in order to relieve themselves the personal Creditors are not bound to assign by adjudication, what is not their own. In the year 1727, the heirs of Andrew and others per Sal Creditors of wealth of Andrew contra Andrew & others per General persons dispone for any right each of them hath, without consenting to one another's deed, and one of them in whom the true right stood, is a matter out of the procuratory or instrument of Resignation, no right is transmitted, Stair lib. 2 Tit. 11 § 7. Upon which Account when many persons Dispose or Resign, they do it with Mutual Consent, whereby the deed of every one contributes to support what is done by the rest. If a Superior be dead as heir to his Vassal in the property, his service will bear, and the Vassal's rights, Dominium directum trahit ad se. But the proprietor's acquisition of the Superiority (which words at least of the Crown) cannot give him a complete right, until he be Infeft in the Superiority Acquired. Dominium Vassal non trahit directum Stewart's Answer to Dirlet. Douls. Gilt. Consolidation. But a Vassal Infeft as heir or singular Successor to the Superior, may as Vassal, Resign to himself as Superior, ad Remanentiam Stair lib. 2 Tit. 11 § 8. Formerly Procuratories of Resignation did, as other Mandates, fall by the death of the Disposer or purchaser, before Resignation was made. But now procuratories of Resignation after, are sufficient warrants for making Resignation after.

See consents to Infeftments of annual rents by Sir Husband upon the 15 Decemb.