

After, as well as before the death of the Grantors, or parties to whom they are granted, or both; Provide that Instruments of Resignation taken after the Death of either party, Express the titles of those in whose favour Resignation is Made; other wise they are Null Act 35. l. 1. Par. 11. 3. N. The Solemnitie of Resignation is so Necessary and essential to Denote the Disposer of an Irredeemable fee that the a simple Renunciation without it, might oblige him, it would not be Effectual against his singular Successors, nor constitute any Real right in the person of the acquirer. 23 Novemb. 1627. Dumber content. Cause fura eodem modo. Debitum inter quo Constituta inter Stair lib. 3. Tit. 2. 58. but a Renunciation without the formality of Resignation may suffice to Divest the Acquirer of any right not requiring Infeoffment, as a Service, or a different Infeoffment which is not transmitted to others by Infeoffment but by assignation Stair lib. 2. Tit. 11. 56. May also be being, Speciman right are Extinguished by a Renunciation Registered according to Law Act 16. Par. 2. J. C. But even these cannot be transmitted by the Acquirer in favour of his singular Successor without Resignation Stair ibid. An Instrument of Resignation cannot be supported by any other writ under the hand of the Pabul or Superior or of both, acknowledging the Existence thereof Craig Feud. lib. 3. Tit. 1. 53. Stair lib. 2. Tit. 11. 51. But none are obliged after 40 years to produce procuratories or Instruments of Resignation, nor not in a Reduction, where Charters mentioning Resignation to have occurred are Extant; Act 214 Par. 14. J. C. Under which words Charters are Comprehended, not only formal Charters, but any Disposition or Contract of Alienation where upon Seisin is taken, or obliging to grant Infeoffment, tho it does not presently Dispose.

A Resignation ad Remanentiam, accepted by the Superior and duly Registered, doth, without more aids, fully Denude the Vassal, and Consolidate the property with the Superiority, as it stood the time of the Resignation, affected with all its Real Burdens, or debts fundi as fees Annual rents tasks Services &c. tho Constituted without the Superiors Consent Craig ibid. 56. Stair ibid. 55. Seeing of the fee Returning thus by Consent to the Superior, continued not affected as it was in the person of the Vassal, Mens Securitatem might easily be Evacuated by Voluntary Resignations in the hands of the Superiors. But Real burdens not Consented to.

Go by the Superior, or Authorized by Law, Case when the fee Returns to him either for a time by ward non entry &c. or for ever by Recognition, Craig ibid. But a simple Resignation in favour, doth not Divest the Resigner till Infeoffment follows in the person of the Resignatary. The Effect of Resignation in favorem accepted by the Superior and not followed with Infeoffment is much Controversed by our Greatest Lawyers who have split in their Sentiments about it. Sir Thomas Hope that subtle and skilful Lawyer is of Opinion that the Resigner in such a Case cannot grant a safe Infeoffment to the prejudice of him in whose favour the Resignation is Made, Major Ball's Got. Case and Publick Infeoffments 8. 11. But that a third or first Infeoff upon a second Resignation would be preferred vide 8. 162. Which opinion allowing the Resigner a power to give a Jus Ventus et feudum de domino tenendum, when he is not Infeoffed to give a Jus Ventus et feudum de se tenendum, doth give the Acquirer of our Law; <sup>provisory</sup> <sup>to a</sup> formerly a safe Infeoffment to the Acquirer, was posterior Publick Infeoffment, the precedence of prior Resignation; and now all Infeoffments, whether published or safe, to be made with Possession or not, are refused according to the date of the Constitution of their Seisins Act 13. l. 4. Par. 11. 3. N. in Town Michell or Dives Town Doubts and questions Infeoffment in favorem doth not Resignation in favorem accepted by the Superior doth totally Denude the Resigner and Endeavour to prove this by Grant Infeoffment. But Craig Feud lib. 3. Tit. 1. 59. 1610. Stair lib. 3. Tit. 2. 57. 11. McKenzie Feud lib. 4. Tit. 7. 17. Alward (As sure is to Dives. Doubts &c. de Resignatione) are of Opinion, that a simple Resignation in favour, doth not Denude the Resigner, unless Infeoffment follows in the person of the Resignatary. Which opinion is more agreeable to this than Sir John Michell's, for these Reasons, 1. of a simple Resignation did Denude the Resigner, the thing Resigned should be acquired either to the Superior or to the Resignatary. Now that is not acquired to the Superior, is clear because simple Tradition only doth not transfer Dominium sine Graja habili a se transferend. Dum et ad esto, that simple delivery without Expressing a Cause did transfer property: vel Delivery sub Modo, as here, doth not like the Modus or end for which it was Resigned in the Superior's hand be Implemented by him. Because stilli Actum Constetur quem in aliquod Superst agendum recundum Divi. Major.