

Marcil Responsum ex Circano Descripsim. et tunc a sid non agitatur  
 by Making Resignation in favour, that the thing resigned should continue  
 with the Donor in case the party favoured should think fit not to accept  
 to the party must needs ~~be understood~~ be understood to remain in the hands  
 of the Donor, the Deed is complicated by the other taking Infeftment. According  
 to the Rule Dominium non quum dimittitur, nisi alteri. Igitur a iura alij  
 est illi than the person in whose favour it was made, may be extinguished  
 by a personal renunciation: which is a further <sup>argument</sup> that the party in whose  
 favour it was made, may be extinguished (as is done by Resignation in favour  
 of a third person) and might could not receive, nor have the benefit of the thing  
 And albeit the owner of a moveable thing may lose the property of it  
 by having it made retails: yet when one gives or disposes to another  
 what he would not otherwise part with, if the party in whose  
 favour the Disposition is made refuse to accept thereof  
 the property remains with the Donor or Disposer. As when a man  
 institute a Heir or will not Enter, the Heir ita goes to the Heir  
 as Intestate; or when a Legacy is not accepted off, it continues with  
 the Executor burdened with the payment of it. If the Resignation  
 be made in favour of the Resigner, the Instrument of Resignation must be  
 recorded, as well as Instruments of Resignation in favour of another  
 in order to put men in mind of the Resignation, and to prevent  
 any fraud. But such an Instrument is not required to be registered, and  
 there fore when an Instrument is not registered, it does not prejudice a subsequent  
 Resignation. As the Acceptance of a Resignation in favour of another  
 found not to Denude the former Vassal, till a new Vassal was  
 Infeft 14<sup>th</sup> Decemb. 1677 Purves contra Strachan. From this point  
 it follows, that Resignation in favour of another does not Denude the Resigner  
 the following consequences are drawn. Hence the first Infeftment  
 upon a second Resignation will be preferred to a second Infeftment  
 upon the first Resignation Craig Feud lib. 3. Tit. 1. § 10. Stair lib. 3  
 Tit. 2. § 12. McKenzie ibid. 14. Novemb. 1677 Purves contra Strachan  
 The Reason is plain, for by simple Resignation the vassal is  
 Denuded, and so may give another Resignation in favour of another  
 person: as one first Infeft upon a second Charter would be  
 preferred to the Receiver of the first Charter. If a person do Volun-  
 tarily take a second Resignation and Infeft himself there on,  
 knowing of a former Resignation in another's favour, his right  
 might be reduced ex Capite fraudis: but not when the second is  
 made to a Creditor Stair ibid. who is not supposed to Inquire him-  
 self

Self officiously upon another's Interest, but only to consult his own  
 Security. The Infeftment in the person of the Resignatory, the Super-  
 ior gets his Casualties, not by him, but by the Resignor who con-  
 times Vassal till the other be Infeft 14. Novemb. 1677 Purves contra  
 Strachan. Stair ibid. McKenzie ibid. I cannot therefore understand  
 why the Lord Stair and Sir George McKenzie should hold that the  
 Lands Well after Resignation be in non entry in the Superior's  
 hands, till the Resignation be past, or the person in whose favour  
 it was made be Infeft: as if other wise the Superior would want  
 a Vassal; since he could not continue him as Vassal from whom  
 he had Accepted a Resignation, nor the Resignatory as Vassal,  
 he not being Infeft. For Lands can never be in non entry, so  
 long as there is a Vassal: and here the Resignor is still Vassal,  
 and the Superior gets his Casualties from him till he be Denuded,  
 which these two Lawyers Advise us is not. Perhaps indeed,  
 while the person in whose favour the Resignation was made  
 is in delay to get himself Infeft, the Superior (to  
 himself as Vassal) may justly claim the ordinary duties,  
 as if he were in non entry. But as soon as Infeftment is made,  
 the Resignor is fully Denuded and cannot transfer any right.  
 If the Superior after his Acceptance of Resignation, Resists or  
 Delay to Enter and Infeft the Resignatory, he is in non entry  
 with him, as if upon a bill offered by the Resignatory, or  
 his Heir, with the Instrument of Resignation and warrant there of,  
 grant letters of homing to Charge the Superior to receive and Infeft  
 the Resignatory as his Vassal. From which time the Superior  
 could claim nothing upon the account of non entry: being per-  
 se Notet, that the Resignatory was not Infeft. And the Superior  
 If he receive a new Resignation in favour of another and In-  
 feft him, will find himself liable for damage and Interest to the  
 obtainer of the first Resignation Craig Feud lib. 3. Tit. 1. § 8 Stair  
 lib. 3. Tit. 2. § 12. If a Buyer of Lands by non entry, the Superior  
 hath no Legal Remedy to Urge him to get it, but to take his Casualties  
 as they fall by the Disposer, and law allows him as if the  
 land had not been sold Craig ibid. Stewart answers to Sir  
 Douts Tit. what way the buyer may be Urge to Enter.  
 Sir John Misset (Doubles and Questions Tit. Resignation)  
 Says that after Resignation the Resigner and Resignatory cannot  
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