

1631. February 4. LORD GLENGAIRIE against LORD LOVAT.

No 42.

A general service to a predecessor, who had a charter without infeftment, was sustained to force production of all rights to the lands libelled, flowing from the descendants of that predecessor.

LORD GLENGAIRIE pursuing improbation and reduction against the Lord Lovat and Lord Foulis, as heir to the Lord of the Isles, who had a charter granted to his predecessors of the lands libelled by _____, to be holden of the granter, in *anno* 1463, and which was confirmed by the King, for reducing of the right of these lands made to the defenders, or their authors and predecessors, by the sons and daughters of the descendants of the said Lord of the Isles, to whom the pursuer was served heir, for reducing of any right made by the King's Majesty's progenitors, either by the resignation of these descendants, or by confirmation, because these descendants, authors to the defenders, were neither heirs to the Lord of the Isles, nor had ever acquired any right from him; Wherein the defenders opposing against the pursuer's title and interest produced, *alleged*, That the said charter granted to the Lord of the Isles, which was base, given to be holden of the granter, and whereupon never sasine followed, nor yet ever any sasine since in the person of this pursuer, or any other before, can be shown for authorising of this pursuit, and never any possession by virtue thereof can be qualified, could not be any ground to sustain action, to reduce a public infeftment clothed with possession; neither could it be a title to sustain action for production of public rights flowing from the King, and the confirmation made to the Lord of the Isles confirmed but the said base right; for it was not given to be holden of the King, and so could not be found a sufficient title. THE LORDS repelled the allegiance *hoc loco* against the production, and found, That the said base charter confirmed, and the pursuer's retour, albeit no sasine was either shown or replied on, nor yet possession, gave sufficient interest to the pursuer to seek the production of all writs flowing from the descendants of the said Lord of the Isles, and of the rights made by the King and his Majesty's predecessors, of these lands, which had dependence upon that right of the Lord of the Isles, flowing either upon the said descendant's resignation, or otherwise upon the confirmation of their deeds. But the LORDS found, That by virtue of these titles produced, the said pursuer had no interest to seek production of any original rights made by the King to these defenders, which depended not upon the said right made by the Lord of the Isles to the said descendants, seeing there was nothing either shown or alleged, that the pursuer's author or predecessors were infeft therein by the King; and the confirmation foresaid of the said base right alone was not found such a sufficient title to denude the King as might give interest to reduce any posterior or original right made by the King thereafter of these lands, as if the King, by that confirmation, had been then fully denuded of his right; and the LORDS reserved the foresaid exception, which was repelled, against the production, to be discussed *in causa*, in the dispute of the cause, after production.

Act. *Advocatus & Nicolson.*

Alt. *Stuart & Lawrie.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 443. Durie, p. 564.