but to condescend on the registration, and the burden of extracting them lies upon the pursuer. No 49.

It was *replied*, That it is unreasonable to put the pursuer to the expense of extracting the writs called for, when they are in the defender's hand, which he can produce without charge or trouble; and it is not the present question, What the Lords might find in an improbation? but the pursuer insists, that the defender may produce the writs called for on oath, and submits to the Lords who shall be at the charge, if the defenders have them not.

"The Lords found that the defender ought to exhibit the writs called for on oath, if they be or were in his hand since the citation; otherwise find, that the charge of extracting them lies on the pursuer."

Fol. Dic. v. 2. p. 326. Dalrymple, No 166. p. 231.

1779. *July* 1. James Scott *against* John Bruce-Stewart.

James Scott of Scalloway brought a process of reduction and declarator against John Bruce-Stewart of Symbister. The libel set forth, that the lands of Blosta and others in Zeatland, now in the possession of the defender, antiently belonged in property to the Sinclairs of Scalloway, and were by that family wadsetted, in 1667 and 1668, to Stewart of Biggton, from whom the defender derives his right.—That the pursuer was vested in the right of reversion which was in his authors, the Sinclairs of Scalloway. On these grounds, the action concludes, that the lands shall be declared redeemable, and the defender ordained to renounce and discharge his right over them, on receiving the money for which the lands were wadsetted.

No 50.
In reduction of an infeftment of lands, on the ground that the sasine had not been taken on the lands, found, that the production of an absolute disposition with sasine, followed by possession for forty years, afford sufficient title to exclude.

In this action, the defender produced an absolute disposition in 1706, by Charles Stewart of Biggton to his son John Laurence Stewart, of the lands in question, with sasine upon it in 1709. The defender *contended*, That these titles, with possession since that time, were sufficient to exclude the titles which the pursuer founded on, and to establish an absolute right to him in the lands by positive prescription.

Objected by the pursuer to the infeftment 1709, That it was not taken on any part of the grounds in quesion, but at the manor-place of Biggton, without other authority than a clause of dispensation in the disposition 1706, flowing from Charles Stewart, the granter of that deed.

No subject superior can create an union of lands lying naturally discontiguous, to the effect of making a sasine taken upon one part of them good for the whole. It is a branch of the royal prerogative. This was found, Aitken against Grinislaw, January 26. 1622, *voce* Union. It still continues to be the law, although, if union is once established by the Crown in favour of a vassal, it may, by that vassal, be communicated to his disponee; Stair, B. 2.

No 50.

T. 3. § 44. Bank. B. 2 T. 3. § 88. Ersk. B. 2. T. 3. § 45. The sasine, in this case, therefore, not being taken on the ground of the lands, as the law requires, is intrinsically void, and cannot be founded as on a title of prescription.

Answered for the defender; It is laid down by Sir Thomas Craig, that nothing more than the act of the superior, whether the Crown or the subject, is requisite to make an union, L. 2. dieg. 7. § 17. No reason can be assigned why the right of dispensing with the feudal forms in this respect should be peculiar to the Sovereign. It is merely a consequence of superiority, and it is expedient that every superior should have the power to relieve his vassal in this particular, which is a matter of mere form.

But, although it were necessary that the dispensation should flow originally from the Crown, it is admitted, that the benefit of a dispensation once conferred, may be legally communicated. Consequently, the objection to this sasine, even if made within forty years, could have been removed by the production of a title, containing the Crown's warrant. It therefore does not import, that there is any intrinsic nullity in the sasine, such as, that the infeftment was only given in the presence of once witness, or that the notary and witnessess do not sign the instrument; in which cases, the nullity cannot be removed by any collateral production, or upon any production whatever. But the objection in question is altogether extrinsic. The sasine is good, if properly warranted to be taken in that form by antecedent titles, and the only question is, Whether these must be produced in support of the sasine.

If the challenge had been made before the prescription had run, this might have been required; but the objection comes too late after the right has stood unchallenged for forty years. The defender cannot now be obliged to produce grounds and warrants in support of the investiture. He is as little bound to produce the antecedent titles to instruct the granter's power of giving the dispensation, as he is to produce these titles for instructing that the granter was in the feudal right of the lands.—The want of power is not a more essential defect than the want of right.

Replied for the pursuer; The lapse of the years of prescription supplies the want of right to the property of the subject in the granter of that charter or disposition, which is founded on as the title of prescription. This was the sole purpose of the act 1617; and, on this account, the act supersedes the necessity of the producing the more early titles for instructing, that, before the date of the charter, the granter and his authors had a sufficient right to the property of the subjects disponed. But the charter and sasine produced must be, in every respect, complete, according the feudal forms. The lapse of forty years cannot supply any defect in the powers assumed by the granter, as to the manner of completing the conveyance.

In the present case, therefore, this circumstance, that the infeftment is not taken on any part of the lands disponed, is sufficient, in law, to render it null; and no length of time can supply this essential defect.—The law will never

presume, that the granter was possessed of such a privilege, when nothing is shown to instruct it. No 50.

But the terms of the disposition exclude every presumption, that this dispensation originally flowed from the Crown. No previous dispensation is said to have existed. On the contrary, the words imply, that it is the sole act and deed of the granter of the disposition; he directs infeftment to be taken at the manor-place of Bigton, " and that in the name of the hail above designed lands and others above disponed, which I, for me and my heirs, *quoviscunque titulo*, declare and ordain to be sufficient, as if infeftment had passed upon every particular room of the lands," &c.

THE COURT found, ' That the defender has produced sufficient to exclude, and therefore assoilzie him from this process of reduction." And to this interlocutor they adhered, upon advising a reclaiming petition and answers.

Lord Ordinary, *Kennet.* Act. *Rae, B. M'Leod.* Alt. *I. Campbell.* Clerk, *Tait.*
Fol. Dic. v. 4. *p.* 220. *Fac. Col. No* 84. *p.* 163.

Reduction on the Bankrupt Acts; See BANKRUPT.

Reduction *ex capite minorennitatis*; See MINOR.

Reduction of decrees; See PROCESS.

What Title requisite in reductions; See TITLE TO PURSUE.

Reduction, from what time it interrupts *bona fide* possession; See BONA ET MALA FIDES.

See IMPROBATION.

See APPENDIX.