

the operation of the substitution by Mrs. Buchanan, which was only to take place in the event of General Buchanan neglecting to dispose of the subjects.

No. 1.

But, independently of the Irish will altogether, the manner in which General Buchanan made up his titles to those subjects must be held as a virtual discharge and renunciation of the personal right competent to him under his sister's disposition. He had two titles in his person. The feudal right taken up by him, as apparent heir of line to his father, who had died last seised, and the personal right bestowed upon him by his sister. It was certainly competent to him to renounce the latter; and the mode in which he made up his titles, must be regarded as a virtual and implied discharge of the personal right, so as to leave the subject open to the heir of the investiture; Edgar against Maxwell, July 6, 1736, No. 10. p. 3089.

The Lord Ordinary sustained the defences, and assoilzied. But the Court (7th March 1808) upon advising a petition with answers, altered the interlocutor, and found, that the defenders, at the expense of the pursuers, must make up titles to the subjects libelled, and thereafter denude thereof in favour of the pursuers, in implement of the disposition and settlement libelled on.

To which interlocutor the Court unanimously adhered, on advising a reclaiming petition with answers.

Lord Ordinary, *Methven*. Act. *Boyle*. Agent, *W. Patrick*, W. S. Alt. *Cranstown*.
Agent, *Robinson and Ainslie*, W. S. Clerk, *Scott*.

J.

Fac. Coll. No. 263. p. 586.

1807. November 24.

SIR ANDREW CATHCART'S TRUSTEE, *against* EARL OF CASSILLIS.

This case is already reported, 16th November 1802, No. 29. p. 14447.

On appeal to the House of Lords, that Honourable House pronounced this judgment: 'It is ordered, &c. that all the interlocutors complained of in the said appeal, so far as the same relate to the lands and subjects contained in the charter of 1774, or in any similar titles, be, and the same are hereby affirmed: And it is further ordered, that the cause be remitted back to the Court of Session, to review all the interlocutors as far as they respect the effect of the service of Earl David in 1776, with regard to the lands of Enoch and Little Enoch, the lands of Portmark and Polmeadow, the tenements of Maybole, and teinds conveyed by Crawford of Ardmillan, or any other lands or subjects, the title to which is in dispute in this cause, if any such there be, not ruled by the foresaid affirmance; and to hear the parties again as to the effect of the said service as to the said lands and teinds, and as to the right to

No. 2.

Decision that a general service as heir of line and heir-male is equivalent to a service as heir of provision, where it appears from the service that the party serving had both characters in him—reversed.

No. 2. ‘ the said lands and subjects, and to do thereupon as to the Court shall seem
‘ meet.’

When the cause came back to the Court of Session, on a petition by Lord Cassillis, to have the judgment of the House of Lords carried into effect, memorials were ordered on the points remitted. The argument in these, so far as it was different from that already stated, run chiefly on the extent of the remit. On advising these memorials, the interlocutor of the Court was, (10 Feb. 1807,) ‘ They find that Earl David’s general service in 1776 was not a service
‘ as heir of provision, to connect him with the settlement in 1748, or with any
‘ similar deed of provision or settlement, and consequently was not sufficient to
‘ carry the subjects which were specially provided by any such deeds, and were
‘ not contained in the charter 1774, or in any other title deed or charter of a
‘ similar nature: Find that this description applies to the lands of Enoch and Little Enoch, the lands of Polmark and Polmeadow, the tenements of Maybole,
‘ and the teinds conveyed by Crawford of Ardmillan, and that they were not
‘ carried by the general service: Therefore sustains the reasons of reduction
‘ as to these subjects, and, so far, alter their interlocutor of 16th November
‘ 1802, repeal the defences, and reduce, decern, and declare in terms of the
‘ summons.’ And to this interlocutor, on a reclaiming petition and answers, 24th November 1807, the Court adhered.

Act. Tho. W. Baird.

W. Wallace Brown, Agent.

M.

Fac. Coll. No. 9. p. 30.