

it becomes necessary to determine it; accordingly, in the case of Sir Hector MacKenzie of Gairloch, in 1777, No. 58, p. 15053. the Court found, that a similar reservation was all that the superior was entitled to insist for.

The Lord Ordinary "found, That the Duke of Argyle is not entitled to insert in the charter to be granted to the Earl of Dunmore the reservation stated in the minute given in for him, and that the Earl of Dunmore is entitled to have a charter with the reservation stated in the minute given in for him."

Upon advising a reclaiming petition and answers, it was

Observed: A clause reserving the question entire, when the case, that the substitute entitled to take up the estate is not heir of line to the person last in possession, shall occur, is all that the pursuer is legally entitled to demand. The case of Lockhart against Denham, in so far as the Court denied full effect to a similar reservation, was erroneously decided.

The Lords, "in respect the reservation proposed by the Earl of Dunmore leaves the question entire when it shall occur," unanimously "adhered."

Lord Ordinary, *Justice Clerk.* Act. Arch. Campbell, jun. Alt. Dav. Williamson.  
Clerk, Home.

D. D.

Fac. Coll. (APPENDIX) No. 1. p. 13.

## SECT XV.

A Superior may redeem Apprisings led against his Vassal.

1566.

BROWN *against* ABBOT of DUNFERMLINE.

Anent the action between Brown of Fordel and the Abbot of Dunfermline, the said Brown obtained a decret of the Lords against the Laird of Grange, for certain sums of money, for which sums the said Brown apprised certain lands pertaining to the said Laird of Grange, which lands were holden of the Abbot of Dunfermline; upon which apprising, the said Brown obtained letters by deliverance of the Lords in all the four forms, charging the said Abbot to receive the said Brown immediate tenant of the said apprised lands; after which charge the Abbot meaned him to the Lords, desiring the said letters to be suspended for certain causes contained in the said Abbot's supplication; upon which the said Lords suspended the said letters, and ordained to summon the parties to a certain day, to hear the said letters suspended *simpliciter* for the causes contained in the said Abbot's supplication, or to show a reasonable cause why the same should not be done: The said letters being called, both the said parties compeared before the Lords.

No. 81.

The superior's offer to redeem apprisings must be made *tempestive*, and therefore an offer at the Bar, after three consecutive charges, was not sustained.

No. 81. It was alleged by the said Abbot, that the said letters charging him to receive the said Brown immediate tenant to him of the said appraised lands, were evil given, because in respect of the act of Parliament, which bore, that the superior of the lands may take the appraised lands to himself, paying the sums to the creditor, for which they were appraised. It was alleged by the said Brown, that albeit the said act had borne a provision, yet the said letters of four forms should not be suspended, because, if the superior of lands appraised would hold the lands to himself, he should incontinent pay the said Abbot, because there were three charges of the said letters given to the said Abbot, and certain days between every charge: And also, the said Abbot had purchased suspension of the said letters by sinister information to a long day, at which day the said letters of suspension being called, and the matter reasoned before the Lords and left in their hands, and all this time never offered the party to pay him the sums contained in the appraisings for which he would hold the lands to himself, and have the said letters suspended; and thereafter the said matter being in the said Lords' hands for the space of eight or ten days, and then being wakened by the parties, who both compeared before the Lords, and yet never silver offered at this time by the said Abbot to the said creditor; but at the last compearance of the Abbot, he offered a purse, wherein the said sum that the lands were comprised for was, which he offered to the said Brown present at the Bar, to which the said Brown answered, that the said offer was over-late and out of time, and therefore his letters of four forms should have farther execution; which allegiance of the said Brown was admitted by the Lords, and ordained the said letters to have farther execution against the said Abbot, notwithstanding the Abbot's allegiance and offer foresaid, which was thought by the Lords over-late and out of time.

*Fol. Dic. v. 2. p. 411. Maitland MS. p. 175.*

1634. March 5. BLACK against LORD PITMEDDEN.

No. 82.

The superior may redeem the lands before expiry of the legal.

One Black having comprised some lands, whereof Pitmedden was heritor, and having charged him as superior, to receive him upon the comprising, after the letters were found orderly proceeded, notwithstanding of Pitmedden's allegiance that he was heritor, because his heritable right was acquired from the L. Meldrum, who was heritor of the lands, and was debtor to Black in that sum, for which the comprising was deduced, and for which he had affected the land with some diligence, before Pitmedden's right was acquired, so that Pitmedden remained superior to the compriser; but his right of the property was not sufficient against the compriser; and Pitmedden claiming a year's duty for entering of the compriser, the Lords allowed to him retention of a year's rent of the land therefore, during which he possessed the land, by virtue of his heritable right, albeit that heritable right was not found sufficient to exclude the compriser. After which sentence Pitmedden suspending again *de novo*, upon the act 36. Parliament 5. James III.