

Luss, as oye and heir to him, against the six heirs-portioners of the superior, to enter themselves heirs, and obtain themselves infest in the superiority, and to receive and infest the pursuer in the fee, otherwise to lose the benefit of the superiority, during life, and that the pursuer may be entered by brieves out of the Chancery, the King being immediate superior to the Kellies. Two of the defenders appeared, who adjudged from one of the heirs-portioners, and were infest, and who offered to receive the pursuer, as to their part, and thereupon alleged they could not lose their superiority. The pursuer answered, That if all that had right to the superiority would concur in a precept to infest the pursuer, she would accept the same, but was not obliged to hold of so many several superiors; but if all would not concur, the eldest heir-female has the prerogative of indivisible rights to be the only superior; albeit the Lords, in superiorities of feu-farms, may either appoint satisfaction to the remaining heirs-portioners for their shares in the feu-duties, or may decern her to infest the rest in annual-rents out of the lands, effeiring to their share of the feu-duty.

The Lords repelled the defence, and found, That the vassal was not obliged to take infestment severally from the heirs-portioners of the superior, but either from the whole jointly, or from the eldest, by the prerogative of her birth.

Fol. Dic. v. 2. p. 408. Stair, v. 2. p. 643.

No. 33.
ments from
heirs-portion-
ers severally,
but from
them all joint-
ly, or from
the eldest.

SECT. X.

What Sort of Singular Successors entitled to be received by the Superior?
—Whether the Seller or Purchaser bound to enter?

1628. *March 11.* FERGUSON *against* COUPER and Others.

In a suspension betwixt Ferguson of Kilkerran, and Andrew Couper, writer, and certain other creditors to John Crawford of Skeldon, who had comprised the said John's lands held of Kilkerran, and had all charged him, as superior, to enter them, whose charges being all suspended by him, upon a reason, viz. because he had, before their charges, entered his own son to the same lands, who had comprised the same, and had charged him to receive him, and for obedience whereof he had received him; this reason was not found relevant; but the Lords found, That the superior should receive and enter all the comprisers, without prejudice always of the first compriser's right, who was entered by him before, *prout de jure*, to the which his entry of the others should not prejudice, neither should the same be prejudicial to the superior's entry of more vassals, being done for

No. 34.
A superior is
obliged to re-
ceive and en-
ter all com-
prisers who
charge him,
without pre-
judice of the
first compriser's
right who
had entered
before.

No. 34. obedience of charges; and declared, that this entry should not hinder the parties, in their own time and place, to dispute upon the priority and preference of their rights to the lands, which was not proper now to be handled in this place; but the Lords were of the mind, that where parties were equal in diligence, that the superior might prefer his son to the rest, in all which he might lawfully advance him unto concerning his entry.

Act. *Nicolson.*

Alt. *Miller.*

Clerk, *Hay.*

Fol. Dic. v. 2. p. 408. Durie, p. 358.

* * Auchinleck reports this case :

A comprising is led by divers persons upon any of certain lands, whereof one of the parties was son to the superior of the lands comprised, before the rest of the comprisers could get the superior charged, he infeft his son, by virtue of his comprising; and being charged to infeft the rest of the parties, the superior suspended, that he cannot infeft them, because he had infeft his son before he was charged. The Lords ordained him notwithstanding, reserving his son's right *prout de jure.*

Auchinleck MS. p. 223.

1628. July 22. LORD BORTHWICK, &c. against HILSTAIN, &c.

No. 35.

Found in conformity with the above.

In a suspension, Lord Borthwick and Walter Hay against Hilstain and Smith, where two creditors had comprised the lands of their common debtor, and had charged the Lord Borthwick, superior of the lands, to enter them both, and the creditor who was prior in comprising and diligence, alleging, that he only ought to be received by the superior, in respect of his said diligence, and the other contending, that the superior ought to receive him also, the Lords found, That the superior ought to receive both the comprisers, without prejudice to them, in their own time and place, to dispute which of their rights should be preferred to others; for the Lords declared, that the superior's receiving of them both at one time, now conform to this ordinance, should not prejudice any of the comprisers in the just advantage which the priority of diligence might give to the one before the other; which priority should not be prejudged by this receiving of the last as soon in his entry by the superior as the first; and as concerning the duty to be paid to the superior, because it was questioned if both the comprisers, and each one of them, should pay a year's duty of the land to the superior, or that one year's duty should only be paid, and by which of the two the same should be paid, the Lords decided not that point that day; but thereafter, upon the 26th of July, 1628, in this same cause, the point being heard and considered, they found, that the superior ought to have one year's duty from all the comprisers, or any of them who most trusted to his comprising; which year's duty, so to be paid by