

No. 4. 1738, July 28. SCOTT *against* SCOTT.

See Note No. 2, *voce* FEU-DUTIES.

No. 5. 1741, June 9. SIR JOHN MAXWELL *against* M'MILLAN.

MR M'MILLAN purchased from the L. of Blair the superiority of Sir John Maxwell's lands, and having obtained a charter under the Great Seal split it among four different persons by assigning the precept in the charter, retaining a fourth himself; and thereon Sir John Maxwell brought a declarator that his superiority could not be divided; and the Lords unanimously found it could not.

No. 6. 1742, Feb. 27. STUART *against* MR DAVID COUPER.

See Note of No. 33, *voce* ADJUDICATION.

No. 7. 1742, June 23. DUNCAN *against* THE EARL OF ABERDEEN.

NOTWITHSTANDING the act of sederunt 1709 appointing resignation in burgh by staff and baston, yet in the town of Aberdeen from that time till 1722 there were 399 resignations by a penny utole agreeable to the *Leges Burgorum* 56, and only 16 agreeable to the act, and particularly one infestment of annualrent to which Duncan has right was by a penny utole; and therefore the question was, Whether to sustain this objection to annul Duncan's infestment? We delayed till the 25th that a decision quoted in 1729 concerning such a resignation in this burgh in 1718 should be laid before us. Accordingly, the 25th, the former interlocutor was laid before us, which was indeed in point, and more direct than was set furth in the papers. It was an annualrent right, and the symbols a penny utole in the year 1707; and therefore we adhered. (See Dict. No. 8. p. 14,316.)

No. 8. 1744, Feb. 24. SIR W. MONTGOMERY *against* J. WARDROPE.

THE pursuer, proprietor of a village, who had feued out some houses, without having the clause *cum brueriis* either in his own or his vassal's charters, afterwards got a charter erecting his village into a burgh of barony with a clause *cum brueriis*, and sued declarator against his vassal, that he could not brew without his licence. But we unanimously found he could brew without his licence, 10th February.

On the reclaiming bill against our interlocutor of the 10th, Arniston thought that a feu even *cum brueriis* of a part of a barony would not entitle him to free the rest of the barony, and seemed to think the clause *cum brueriis* not implied. But that first was not the question before us, but whether the defender had right to brew or not? This petition indeed insisted chiefly that the feu rights produced were not of the lands whereon the brewery was, which we refused, reserving to the pursuer to quarrel the defender's right to the lands as accords.

No. 9. 1748, Nov. 8. NASMITH of Ravenscraig *against* STORIE of Braco.

LANDS being first feued for a feu-duty of L.7, and thereafter that feu-duty afterwards disposed to be held blench for payment of 1d. and relieving the disponent of 45s. as part

of the *reddendo* due to his own superior, with clauses to enter the vassal's heirs gratis; thereafter the disponent sold the superiority, but excepted from the warrandice former feu rights granted of these lands, "with the express burden of which feu rights these presents are granted by me and no otherwise." In a question betwixt the vassal and singular successor in the superiority, the Lords found that infeftment of the feu-duty effectual, that the lands were still holden feu, but the feu-duty held under another right, and found the 45s. was part of the *reddendo* and ought to enter the charters, but found the extraordinary personal clauses not real. This was the interlocutor as marked on my papers by Lord Tinwald, for I was not present. 8th November, Altered this last part in respect of the burdening clause.

No. 10. 1748, Dec. 14. FARQUHARSON *against* FARQUHARSON.

HE claimed the estate of Monaltrie, as superior. We all doubted whether he could carry it, that is, if he had fulfilled the conditions, because he was engaged in the Rebellion 1715. However, we agreed to determine the general point, which is stated as doubtful in the 21st Geo. II. the act to amend and to enforce the act of the 29th of the King, for the more effectual disarming the Highlands, viz. Whether the act 1mo Geo. I. entitled act for encouraging superiors, vassals, &c. commonly called the Clan-act, and that clause of it in favours of loyal superiors which was expressly repealed by the said act 21st Geo. II. was limited to the Rebellion 1715, or to the life of the late King, or if it subsisted during the life of the Pretender till it was repealed? This question was heard three days at the Bar, Friday, Saturday, and Tuesday; and this day we would have ordered informations, but the lawyers would not agree to give them before the holydays, therefore we this day proceeded to advise, and found that it subsisted till that was repealed. We were full except Leven, who was absent; and were unanimous except the President, who declared himself of a different opinion, but did not give his reasons. There spoke Dun, and I, Drummore, Justice-Clerk, and Shewalton,—14th December 1748.

5th January 1749.—The objection to the claim was, that in the Rebellion 1715, Invercauld did not continue peaceable and loyal, but was taken prisoner at Preston, in Lancashire. The fact was admitted, but it was said that he continued loyal in the Rebellion 1745, on account of which the vassal Monaltrie was attainted of treason, and the condition of the Clan-act must be limited to the Rebellion for which the vassal was forfeited. The Lords unanimously found that he is not entitled to the benefit of the Clan-act.

No. 11. 1749, June 21. DICK of Grange *against* JAMES COOK.

DICK of Grange, as superior, possessing some houses, on a decret of non-entry afterwards found null, and repairing some houses and rebuilding a burnt house; in counting for his intromission, I found these repairs, &c. ought to bear annualrent, because without them there could have been no rent. But I found that Grange must impute his intromissions first to these repairs, and next to his feu-duties current and bygone. The Lords adhered to the annualrents of expenses of repairs and rebuilding; but found he might impute the rents first to his feu-duties bygone, as well as current, before paying any of the repairs, even the annual repairs that would be allowed to tenants.