

them, or their authors, from the authors of Mr. Aitchison of Rochsalloch, upon charters and feu-rights; by which there is a feu-duty payable to the superior, with a condition, that the feu-duty should be doubled at the entry of each heir; but nothing is said as to the entry of a singular successor.

The feuers were willing to enter with Mr. Aitchison, and to pay him the original feu-duty, or the double thereof, at their entry; but this he refused, insisting for a whole year's rent, both of the lands and houses; and brought a declarator of non-entry against them before this Court.

The point was determined, after a hearing in presence, and upon considering reports relative to the practice, which last chiefly weighed with the Court.

“ The Lords find, That the respondent, as superior, is entitled for the entry of singular successors, in all cases where such entries are not taxed, to a year's rent of the subject, whether lands or houses, as the same are let or may be let at the time, deducting the feu-duty and all public burdens, and likewise all annual burdens imposed on the lands by consent of the superior, with all reasonable annual repairs to houses, and other perishable subjects.”

Act. *M<sup>c</sup>Queen.*

Alt. *Crosbie.*

Clerk, *Campbell.*

*Fol. Dic. v. 4. p. 315. Fac. Coll. No. 157. p. 29.*

\* \* A similar case was decided, 25th November, 1791, Anderson against Milne, not reported. See APPENDIX.

1794. June 6. THOMAS BRISBANE *against* LORD SEMPILL.

In 1705, John Brisbane disposed the estate of Bishoptown to John Walkinshaw, his heirs and assignees.

The disposition, *inter alia*, contained the following clauses:

“ The said lands of Bishoptown, &c. to be holden of me, my heirs and assignees, in feu-farm and heritage, for ever, for payment to me and my foresaids of the sum of twelve pennies Scots money, in name of feu-duty, yearly at the term of Whitsunday, beginning the first term's payment thereof at the term of Whitsunday next to come, and the heirs of the said John Walkinshaw, doubling the foresaid feu-duty the first year of each of their entries to the foresaid lands; and the singular successors of the said John Walkinshaw being obliged for payment to me and my foresaids of the sum of \_\_\_\_\_ the first year of each of their entries to the said lands, in satisfaction of all farder that can be exacted or craved by me and my foresaids forth of the same.”

The scored blank in this clause is thus taken notice of in the testing clause: “ And it is further declared, That the blank left for filling up the composition to be paid for the entry of singular successors is, with consent, scored, as above, before subscription.”

After the procuratory of resignation, and other usual clauses, the deed proceeds:

No. 69.

entry of a singular successor, either in lands or houses, where such entry is not taxed.

No. 70.

A singular successor found liable in a year's rent for his entry, altho', by the original charter, conveying the lands to heirs and assignees, it was provided, that so often as the lands should fall into the hands of the superior, “ by reason of life-rent, escheat, non-entry, or otherwise for whatsoever occasion,” they were of new to be made over to

No. 70.  
the vassal and  
"his fore-  
sairs," on  
payment of  
two shillings  
Scots money.

"As also I, the said John Brisbane, binds and obliges me and my foresaids, that how oft att any tyme hereafter the lands and others foresaid, or any part thereof, shall fall in the hands of me and my foresaids, as immediate superiors thereof, by reason of life-rent, escheat, non-entrie, or otherways, for *whatsomever other occasion*, als oft of new again to make over and dispone the same to the said John Walkinshaw and *his foresaids*, they paying to me and my foresaids the sum of *two shillings Scots money* each of the said times for granting the said rights, and being at the expenses of drawing and forming thereof, and relieving me and my foresaids of the causes for which it shall happen their said escheats to fall; and binds and obliges me and my foresaids, that we shall not, at any time hereafter, lye out unentered of the said lands, to the prejudice of the said John Walkinshaw and his foresaids; and that we shall free and relieve them of all damage that they or any of them can sustain through the ward or relief of the saids lands, or otherways, whatsoever manner of way, through their holding the samen of me and my foresaids."

Lord Sempill having acquired the estate by a singular title, Thomas Brisbane, the heir of the original disponer, brought a declarator of non-entry, where the question came to be, Whether Lord Sempill, as a singular successor, was liable for payment of a year's rent for his entry, or if he was entitled to be entered for two shillings Scots money, in terms of the above mentioned clause? The defender

Pleaded: *1st*, The original disposition to John Walkinshaw being granted to him, his heirs and assignees, and not only the clause in question, but the whole intervening clauses, being conceived in favour of him and "his foresaids," these words are, in all respects, equivalent to a repetition of the phrase "heirs and assignees;" and of course, as an assignee, the defender is entitled to an entry, on payment of the above taxed sum.

*2dly*, The obligation on the superior contained in the clause above mentioned, is sufficiently broad to comprehend every possible case in which an entry could be required, either by an heir or a singular successor.

Answered: It was not till the 20. Geo. II. that the superior was obliged to enter voluntary disponees; and, by that statute, he got a year's rent as a compensation for this innovation on his right. His title to exact it is considered as one of the essential and inherent rights of superiority, and every limitation of it is held *strictissimæ interpretationis*; Bankton, B. 2. T. 4. § 34. and it is never to be presumed from any equivocal expression in the original charter. The sole purpose of the above mentioned clause was to provide against the superior's taking any advantage of the lands falling into his hands by a feudal delinquency. It says not a word of singular successors, and was never meant to remit the composition due on their being received. Accordingly, in many cases, where the clauses founded on were much more favourable for the vassals than the one in question, the superior has been found entitled to a year's rent; 2d February, 1769, Magistrates of Inverness against Duff, No. 68. p. 15059. 25th July, 1751, Salmon against Boyd, No. 10. p. 4181. *voce* FEU; December, 1789, Mercer against Grant; July,

1791, Duke of Queensberry against Smith; 1778, Sir W. Hamilton against Earl of Lauderdale. The three last cases not reported. See APPENDIX. No. 70.

The Lord Ordinary reported the cause on informations.

The Court were clear, upon the grounds stated by the pursuer, that the entry of singular successors was not taxed by the charter in question. It was further observed, that the circumstance of the parties having agreed to score the blank which had originally been left for the purpose of filling up a fixed composition, to be paid on the entry of a singular successor, afforded additional evidence that they meant to leave that matter to be regulated by the common law, and that the general clause founded on by the defender was intended solely to provide against the lands remaining with the superior, in consequence of a feudal delinquency.

The Court found, "That Lord Sempill was not entitled to be entered as a singular successor in the lands in question, but upon payment of a year's rent, in terms of the statute of the 20. Geo. II."

Lord Ordinary, *Justice-Clerk.*

Act. *Honyman.*

Alt. *Dean of Faculty Erskine.*

Clerk, *Home.*

R. D.

*Fol. Dic. v. 4. p. 315. Fac. Coll. No. 123. p. 275.*

### SECT. XIII.

Singular Successors entitled to be entered without paying up the By-gone Duties.

1630. July 17. LORD ERSKINE against EARL HOME.

A superior cannot refuse to give infeftment upon a comprising deduced against his feu-vassal, upon pretence of by-gone feu-duties resting owing, because the singular successor is not liable to pay the feu-duties that have become due before the date of his right, and the superior is at no loss, seeing he may point the ground for the same.

No. 71.

*Fol. Dic. v. 2. p. 410. Durie.*

\* \* This case is No. 59. p. 15054.

See Cowan against Elphinston, No. 62. p. 15055.