

No. 93.

For, had the legal of this adjudication been expired in the person of Sir David Cunningham, it ought not to be doubted, but that as Sir David, so his assignee Captain Chalmer, was entitled to the retoured duties during the non-entry, as Captain Chalmer would have been had he entered heir. Mean time, Captain Chalmer taking advantage of the terms in which the interlocutor was expressed, was advised to appeal; and the House of Peers affirmed the decree, willing possibly to restrict these feudal casualities which they are not acquainted with, from considerations that might appear to them equitable.

*Fol. Dic. v. 4. p. 316. Kilkerran, No. 6. p. 530.*

\* \* D. Falconer's report of this case is No. 41. p. 9330. *voce* NON-ENTRY.

1794. February 20.

JOHN MURRAY *against* JAMES SCOTT.

No. 94.

The superior is not obliged to relieve the vassal from any share of parochial burdens.

In 1696, two-thirds of the lands of Nether Balcairn, with the teinds, and a corresponding part of the seat in the parish church, were feued out to Andrew Mitchell, who became bound to pay cess, and all "public burdens forth of and for the forenamit two part lands, according to the valued rent of fifty-five pound eleven shillings and twopence, as the proportion of the hail valued rent of ane hundredth fifty-three pound six shillings money foresaid, (Scots), whereto the hail lands of Nether Balcairn is valued, togidder efferand to the forenamed two part lands."

In 1792, John Murray, who had acquired the superiority of these lands, brought an action against James Scott, then in right of Andrew Mitchell, for by-gone feu-duties.

The defender stated, as a ground of compensation, a part of the money he had paid for rebuilding the parish church; contending, that not only was the expense of building and repairing kirks and manses in every case a joint burden upon superior and vassal, 1663, C. 21. but that, in this case, the feu-contract fixed the proportions payable by each; that the expense of building and-repairing kirk and manse came under the description of a public burden; Stair, B. 2. Tit. 6. § 20. and that all doubt on the subject was removed by the understanding of the parties, who had, ever since the date of the contract, contributed jointly to parochial burdens. See Dundas against Nicholson, No. 22. p. 8511. *voce* MANSE; 23d January, 1773, Bruce Carstairs against Greig and others, No. 66. p. 2333, *voce* CLAUSE; 1791, Bayne against Watson, (not reported; see APPENDIX.)

The Sheriff repelled the defence; and an advocacion having been brought by the defender, the Lord Ordinary decerned in terms of the Sheriff's interlocutor.

At advising a reclaiming petition, it was

Observed on the Bench: Unless there is a special agreement to that purpose, the superior is not liable for parochial burdens. He has no right to a seat in the church, and therefore is not obliged to support it.

The Lords refused this (4th February) and a second reclaiming petition, without answers.

No. 94.

Lord Ordinary, *Abercromby*. For the petitioner, *Cullen, Hagart*. Clerk, *Home*.  
*D. D.* *Fol. Dic. v. 4. p. 316. Fac. Coll. No. 107. p. 238.*

## SECT. XXII.

In Actions at the Superior's instance, who must be called?—CONCURSUS ACTIONEM at the Superior's instance.

1668. *February 22.* GAVIN COCHRAN *against* \_\_\_\_\_.

Gavin Cochran, as donatar to the recognition of certain lands, holden ward of my Lord Cochran, pursues the vassal, as having alienate the major part, and also the sub-vassal, to hear and see it found and declared, that the lands had recognosced by the alienation made by the vassal to the sub-vassal. It was alleged for the sub-vassal that he was minor, and therefore during his minority, *non tenetur placitare super hæreditate paterna*. It was answered, that that holds only in disputing the minor's rights, but is not sufficient against the obligation or the delinquency of the defunct. *2dly*, The party principally called in this process, is the vassal who is major, and whose fee falls to the superior by his alienation, and the sub-vassal's right falls only in consequence, so that no privilege of the sub-vassal can hinder the superior to declare the recognition of his immediate vassal.

The Lords repelled the defence, and sustained process.

*Stair, v. 1. p. 531.*

1715. *February 22.*

THOMAS SPENCE, Writer in Edinburgh, *against* Sir ADAM WHITEFOORD of Blairquhan.

Sir Adam being superior of some part of the estate of Dalvennan, raised reduction and improbation against Shaw of Keirs, from whom the said lands had been purchased by John Binning: In which summons he also calls the said John, as he who had been in the possession of the said lands; wherein he calls for production of all their predecessors' writs, &c. and at length, in February, 1707, obtains a decret of certification: But Thomas Spence having, after citation in this process, but before pronouncing decret, led an adjudication, he now charges Sir Adam,

No. 95.

Process sustained, notwithstanding the minority of a sub-vassal called in an action of recognition.

No. 96.

A superior, in an action of reduction and improbation, need not call adjudgers from his vassals.