No. 79. tend to the lands; so, in this case, they decerned Glenurchie to enter Shian reserving all his own right of property, and reduction of Shian's right at his instance, which they declared to be unprejudged by his entry.

Gosford MS. p. 264.

1795. *November* 19.

The DUKE of ARGYLE *against* The EARL of DUNMORE.

No. 80.
A superior having refused to grant a charter on an entail, unless it contained a clause acknowledging his right to a year's rent, whenever the substitute taking up the estate should not be heir-male or of line to the vassal last entered, the Court found him only entitled to have a reservation inserted in it, keeping the question open for discusssion when the case should occur.

The trustees of the late Earl of Dunmore purchased certain lands, of which the Duke of Argyle is superior, and entailed them on the family of Dunmore, and others, as directed by the deed under which they acted.

In a declarator of non-entry brought by the Duke of Argyle against the present Earl of Dunmore, the institute in the entail, the defender was willing to pay a year's rent for his entry as a singular successor; but the pursuer further insisted, that the charter should contain a declaration, that he should not be obliged to enter such of the substitutes as were not heirs-male or of line to the vassal last entered and infeft, without receiving a year's rent from them, as singular successors also.

The defender, while he objected to this clause, offered, that all the casualities of superiority should be reserved in the charter; and, in particular, that it should be declared in it, "That the said Duke, by granting this present charter, does not exclude himself or his heirs from any claim which he or they may have at law to a full year's rent of the lands herein contained, wherever the heirs of entail to whom the succession shall open shall happen not to be the heir of line of the person who was last entered and infeft by the said Duke, and his foresaids."

The pursuer maintained, that until an entail is acknowledged by the superior, in questions with him, every substitute who is not heir of line to the last vassal is to be held a singular successor, and must pay a composition as such for his entry: That his being willing to put such of them as might be heirs-male of the last vassal in a different situation, was merely *ex gratia*, and from its being his wish to be equally indulgent to the defender as to his other vassals, to whom it had been the practice of his family to grant charters upon similar terms: And that it was necessary for the Court to determine the general question at present; because, after acknowledging an entail, by granting a charter upon it, although it contained the reservation proposed by the defender, the pursuer would be precluded from making his present claim, 10th July, 1760, Lockhart against Denham, No. 56. p. 15047.

Answered: It is imposing an unnecessary hardship on the defender, to oblige him to discuss a general question of law, the decision of which cannot affect the interest of himself, or of his descendants, who will fall to be entered as heirs, though the charter be made out in the terms proposed by the pursuer: The reservation offered leaves the point open for discussion, when a case occurs, where

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. No. 80.

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.

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.

Anent the action between Brown of Fordel and the Abbot of Dunfermline, the said Brown obtained a decreet 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.