

“ Find, That the superiority of Wester Cameron, vested in the person of William under the infeftment 1705, and the property, vested in his person under the infeftment 1730, remained separate and distinct estates, and that therefore the property could not be carried by the special service and infeftment that was afterwards expedite in the person of Archibald the younger; in respect that no resignation *ad remanentiam*, consolidating the property with the superiority, had been expedite in the person of the said William;—therefore repel the plea of consolidation, and also of prescription and confirmation, and other defences stated for the petitioner.”

No. 91.

Reporter, *Lord Justice-Clerk.*Act. *Mat. Ross, A. Campbell.*Alt. *Lord Advocate, Rolland, Blair, W. Craig.*Clerk, *Sinclair.*

S.

*Fol. Dic. v. 4. p. 315. Fac. Coll. No. 266. p. 408.*

\* \* \* This case was appealed. The House of Lords, “ 3d April, 1787, ORDERED, That the appeal be dismissed, and the interlocutors complained of be affirmed.”

1803. July 7. SIR JAMES COLQUHOUN, Petitioner.

By act 42d, Geo. III. C. 116. authority is given to the proprietors of land estates to redeem their land-tax, the consideration for which is to be so much capital stock in the public funds as will yield an annuity or dividend exceeding the amount of the land tax by one tenth. Section 61. enacts, “ That where any heir of entail in possession of an entailed estate in Scotland, &c. means to sell part of the said estate to purchase the land-tax of the estate, in terms of this act, it shall be competent and requisite for him, her, or them, to apply by petition to the Court of Session, stating the amount of the land-tax payable out of the said estate, what part of the estate it is proposed to sell, and the rent or annual value of that part of the estate; and praying the Court, upon the allegations on these points being proved to the satisfaction of the Court, and it being shewn that the sale of the part of the estate proposed to be sold will not materially injure the residue of the estate remaining unsold, and that the part so proposed to be sold is proper (considering all circumstances) to be sold, for the purpose aforesaid, to authorise such sale to proceed, in manner herein after enacted; and the Judges of the said Court are hereby authorised and required to order such petitions to be intimated upon the walls of the Outer and Inner-House of the said Court, in common form, for ten sederunt days, and also to be advertised weekly, for two weeks successively, in the Edinburgh Gazette; which intimation and advertisement shall be a valid and effectual intimation, and advertisement, and service, to all intents and purposes, as much as if the said petitions had been personally intimated to, or served upon, all persons having, or pretending to have, any interest

No. 92.

The superiorities of an entailed estate cannot be sold for redemption of the land-tax.

No. 92. with regard to the said estate, as substitute heirs of entail, creditors on the said estate, or in any way or character whatever; and such intimation being duly made, the Court shall proceed summarily in the matter, and shall authorise the sale of that part of the estate which the petitioner or petitioners are willing to sell, which the Court thinks ought to be sold for the purpose above mentioned, and against the sale of which no sufficient reason is stated by any person having interest; and the extract of the decree of the Court authorising the sale shall be sufficient authority to the Commissioners acting under this act to carry on the sale in the manner herein directed."

Sir James Colquhoun, the heir of entail of the barony of Luss, in order to redeem the land-tax payable for this estate, proposed to sell certain superiorities of his entailed estate, after separating the property or *dominium utile* from the *dominium directum*; and applied by petition to the Court for that purpose, (25th May, 1803,) when the following interlocutor was pronounced, (11th June): "The Lords having resumed consideration of this petition, with the intimation thereof, in terms of their former deliverance, and no objection being made by any person having interest, they allow the petitioner to prove *prout de jure* the amount of the land-tax payable to the public for the year 1798 out of the entailed estate mentioned in the petition, the rent or annual value of the superiorities of the several lands mentioned in the petition, which are proposed to be sold for purchasing the said land-tax, if the same can be sold without injury to the remainder of the entailed estate, and if it is the most proper part of the estate to be sold, all circumstances considered, all in terms of the statutes made in that behalf; and grant commission," &c.

The proof was accordingly reported; but it then occurred to a majority of the Court, that these superiorities were not the part of the estate most proper to be sold; that it would materially injure the rest of the estate to be parcelled out and held of a variety of subject-superiors, instead of being all included in one Crown-charter; and that the multiplication of intermediate superiors between the Crown and the heirs of entail was not a practice which the Court ought to encourage; although others of the Judges thought, that any inconvenience thence arising would be compensated by the redemption of the land-tax of the whole estate, by means of a subject at present yielding no value whatever.

The petition was refused.

For Petitioner, *Robertson.*

Agent, *Wm. Callender.*

Clerk, *Gordon.*

F.

*Fac. Coll. No. 118. p. 263.*