

No. 32.

that the infestment shall be expedite by his own man of business.

Mr. Stewart afterwards brought an action against Burnside, for payment of £.3 19s. 1½d. as the expense of the feu-disposition and infestment.

The Lord ordinary found "the defender liable for the articles charged in the said account, in so far as relates to the execution of the disposition by Sir John Maxwell's trustees, in favour of the defender, amounting to £.1 13s. 6½d. Sterling; but in so far as the articles in said account relate to the instrument of sasine, and taking infestment thereon, in respect it is admitted the defender did not employ the pursuer to extend said instrument, or take infestment thereon, found the pursuer can have no claim against the defender, for payment of said articles.

In a reclaiming petition, the pursuer

Pleaded: As the superior is obliged to give, so the vassal is bound to take immediate infestment. If he were not, he might, by assigning the unexecuted precept of sasine, disappoint the superior of the year's rent which he is entitled to on the entry of a singular successor. Besides, till the original grantee is infest, the superior is without a vassal, which is contrary to feudal principles. Neither could the superior in this case force the grantee to take infestment, by bringing a declarator of non-entry, this being a remedy competent only against the heirs of vassals, who have themselves been entered: The proper way therefore of enforcing his right, is to infest the vassal before he parts with the disposition, and to deliver it and the instrument of sasine to him at the same time, consequently these writings must be made out, and the infestment taken by the superior's man of business.

Observed on the Bench: The petitioner's doctrine has no foundation either in law or practice. As the disposition is granted to "assignees," the vassal is clearly entitled to assign the unexecuted precept.

The Lords, by a great majority, refused the petition, without answers.

Lord Ordinary, *Henderland*. For the petitioner, *Maclaurin*. Clerk, *Home*.

R. D.

Fol. Dic. v. 4. p. 312. Fac. Coll. No. 129. p. 293.

SECT. IX.

Superiority belonging to Heirs-Portioners.

1678. July 30. The LADY LUSS against INGLIS.

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The vassal is not obliged to take infest-

The deceased Laird of Lochend having died infest in the lands of Newtoun-leys, held of Mr. William Kellie, there is a pursuit raised at the instance of the Lady

Luss, as oye and heir to him, against the six heirs-portioners of the superior, to enter themselves heirs, and obtain themselves infest in the superiority, and to receive and infest the pursuer in the fee, otherwise to lose the benefit of the superiority, during life, and that the pursuer may be entered by brieves out of the Chancery, the King being immediate superior to the Kellies. Two of the defenders appeared, who adjudged from one of the heirs-portioners, and were infest, and who offered to receive the pursuer, as to their part, and thereupon alleged they could not lose their superiority. The pursuer answered, That if all that had right to the superiority would concur in a precept to infest the pursuer, she would accept the same, but was not obliged to hold of so many several superiors; but if all would not concur, the eldest heir-female has the prerogative of indivisible rights to be the only superior; albeit the Lords, in superiorities of feu-farms, may either appoint satisfaction to the remaining heirs-portioners for their shares in the feu-duties, or may decern her to infest the rest in annual-rents out of the lands, effeiring to their share of the feu-duty.

The Lords repelled the defence, and found, That the vassal was not obliged to take infestment severally from the heirs-portioners of the superior, but either from the whole jointly, or from the eldest, by the prerogative of her birth.

Fol. Dic. v. 2. p. 408. Stair, v. 2. p. 643.

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SECT. X.

What Sort of Singular Successors entitled to be received by the Superior?
—Whether the Seller or Purchaser bound to enter?

1628. *March 11.* FERGUSON *against* COUPER and Others.

In a suspension betwixt Ferguson of Kilkerran, and Andrew Couper, writer, and certain other creditors to John Crawford of Skeldon, who had comprised the said John's lands held of Kilkerran, and had all charged him, as superior, to enter them, whose charges being all suspended by him, upon a reason, viz. because he had, before their charges, entered his own son to the same lands, who had comprised the same, and had charged him to receive him, and for obedience whereof he had received him; this reason was not found relevant; but the Lords found, That the superior should receive and enter all the comprisers, without prejudice always of the first compriser's right, who was entered by him before, *prout de jure*, to the which his entry of the others should not prejudice, neither should the same be prejudicial to the superior's entry of more vassals, being done for

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