

AITCHESON *against* HOPKIRK and OTHERS.

IN a cause, Aitcheson of Rochsolloch *against* Hopkirk and Others, this point occurred:—Mr Aitcheson's authors had feued out, to the authors of Hopkirk and others, small parcels of land in the town of Airdrie; and, by the feu-rights, a certain feu-duty was stipulated to the superior, to be doubled at the entry of each heir; but nothing was said as to singular successors. Upon these spots of ground the feuars raised houses to a considerable value: Mr Aitcheson insisted, that the present proprietors, who were singular successors, should take an entry, and pay a year's rent of land and houses; which being refused, he brought a declarator, in which Lord Alva, as Ordinary, found that Mr Aitcheson was entitled to his demand. The defenders reclaimed, and the cause was heard in presence. For the defenders it was pleaded, That, anciently, houses were not, properly speaking, the subject of feudal tenures in Scotland: that, to give the rent of houses to a superior, where small pieces of land had been feued out, upon which houses of great value had been built, as was the case here, would, in reality, be giving the superior, for the entry of a vassal, a sum greatly exceeding the value of the feu. It was answered, That the superior was entitled to a year's rent of both lands and houses; that the law made no distinction, and that the practice in similar cases had been, for superiors to exact the rent of houses, on the entry of singular successors. The Lords ordered an inquiry to be made into the practice; and, upon advising the whole, "Found that the superior was entitled to exact a composition for the houses as well as for the lands." What seemed chiefly to weigh with the Court, was the practice.

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1777. July 8. JOHN MACKENZIE of DELVIN *against* SIR HECTOR MACKENZIE.

NOTWITHSTANDING the decision, 11 *New Coll.*, No. 231, it is still a doubt, whether a superior is bound to grant a charter upon a tailyie, containing prohibitory clauses, upon paying composition on entry as an heir, even though the immediate heir of tailyie is also heir of line. The point occurred in a case, John Mackenzie of Delvin, pursuer, *against* Sir Hector Mackenzie of Gairloch. In the information for Mr Mackenzie, the question was stated thus:—How far a subject superior, who has never acknowledged a tailyie made by a vassal, can be obliged to enter an heir, under a strict entail, without receiving the composition usually paid in like cases, where the heir of tailyie, demanding the entry, is also the lineal heir of the vassal last entered. The question, it was said, was new; and that the superior's right to exact such composition had never been disputed.

In the information for Sir Hector, it was stated thus:—Whether the defender is entitled to be entered on paying a *duplicando* of the feu-duty, in the character of an heir; or what other claim lies against him; whether is he to be