

S E C T. II.

Bygone Blench duties.

1627. February 16. Lo. SEMPLE against BLAIR.

IN an action at the instance of the Lo. Semple against Blair of Halve, for payment of the blench-duty of a stone of wax and a pound of pepper, for these lands contained in his infeftment, acclaimed by the pursuer as heir to his father, who was infeft in the lands, and to whom the same was unpaid divers years in his lifetime; the LORDS would not sustain this pursuit for the years owing to the pursuer's father, albeit he did show that his father was infeft, and that he was retoured heir to him; but sustained the same pursuit allenary for the years since the date and time that the pursuer's self was infeft in the land. *Item*, In this process the LORDS found, That where infeftments are granted of lands, for payment of a blench-duty therein contained yearly, with this clause, as use is in many infeftments of this tenor, viz. *si petatur tantum, pro omnino alio onere, &c.*, that albeit the clause bear not that word *tantum*, but only *si petatur*, in such cases, the vassals cannot be convened by their superiors, for payment of the said blench-duties, except that the superior make requisition to the vassals yearly, either before the term of payment prescribed by the infeftment, or upon the very day of the term, for payment of the same; and if the same lie over thereafter one year, or more years, no requisition being yearly made to pay the same upon ilk term, or before the term, to pay at the term, as said is, in such cases, that the superior shall never be heard to pursue his vassal thereafter for payment thereof, in respect of the said clause *si petatur*, which astricts the superior to an yearly timeous requisition. And the LORDS found, That the blench-duties were not adjected as any profitable rents to the superior for the lands, as in the instances for paying of white or red roses, but were adjected as recognizances of the superiority, and ought not to be regarded as in feu infeftments, which had *annuum canonem præstandum*; and found, That these blench-duties were to be respected as personal annual prestations, as of services yearly, which, if they were not required yearly to be done, as in leading of corn or hay in harvest, or leading of peats, after these years they could not be craved. The like was done 18th January 1611, betwixt the Bishop of St Andrew's and one Galloway. See SUPERIOR and VASSAL.

No 18.

An heir served, found not to have right to pursue for blench-duties, which were owing to his father; but only for what fell due since his death.

Act. Hope & Mowat.

Alt. Cunninghame & Scot.

Clerk, Gibson.

Fol. Dic. v. I. p. 366. Durie, p. 276.