

RELIEF, CASUALTY OF.

1563. *March 23.* The LAIRD of DRUMLANARK *against* LAIRD COCKPUILE.

No 1.

THAT quhilk ane air aucht and sould give to his superiour the time that he enteris to his landis, is allanerlie the retourit maillis of the saidis landis; and as concerning the remanent maillis and profetis of the saidis landis, by and attour the retourit maill thair of, the samin auch and sould pertene to the air; or gif thair be many heretrices female, the samine sould be equallie dividit amangis thame.

Fol. Dic. v. 2. p. 334. Balfour, (ANENT RELIEF OF AIRS.) p. 255.

1610. *December 1.* KINCAID *against* LD. of HATTON.

THE heir of a feuar will not be holden to double his feu maill, or feu farm, at his entry to his lands, if he be not bound to that condition by the provision of his feu-charter.

No 2.

Fol. Dic. v. 2. p. 334. Haddington, MS. No 2031.

* * * Kerse reports this case :

In an action betwixt the Lo. Hatton and John Kincaid, brother-son, and heir retoured to Alexander Kincaid, who died infest in the mill and lands of Gogar, holden of — chalders, — bolls of victual, it was found, that the tenant was not obliged to double the feu-farm duty, because he was not obliged there- to in his infestment.

Kerse, MS. fol. 108.

* * * A Similar decision was pronounced 24th November 1736, Earl of Dun- donald *against* Bar. See APPENDIX.

1628. *November 12.* LAIRD of LAURISTON *against* SHERIFF of Forfar.

THE Laird of Lauriston serves and retours him to certain lands in Angus, and takes precepts furth of the Chancery, for taking sasine according to the book of *responde*. The Sheriff of Forfar is compelled to make payment, and the

No 3.

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Sheriff charges Lauriston for his retour. Lauriston suspends, and *alleges*, that the Sheriff can have no personal action against him, seeing he never took sasine upon the said precept, but that the Sheriff had liberty to point the ground. THE LORDS repelled the allegiance, in respect of the act of Parliament, James 6. Parliament 11. cap. 74., and found the action at the Sheriff's instance both personal and real, and that this taking forth of the precept of Chancery, obliges him (whether he took sasine or not) to relieve the Sheriff.

Auchinleck, MS. p. 212.

* * Durie's and Spottiswood's reports of this case are No 2. p. 10163, *voce* PERSONAL AND REAL.

1630. March 12.

SOMERVELL *against* L. DRUM.

No 4.
Relief not due to the superior in an infestment of annualrent.

SOMERVELL's father being infest in an annualrent out of Somervell of Drum's father's land, to be holden of him and his heirs blench for payment of a penny; and the charges being executed upon the retour, as heir to his father, to enter him therein; and being suspended by the superior, that he could not receive him, while he paid *ad quod jure facere tenetur*, as his retour bears, which he alleged to be two years duty of the annualrent itself, seeing it had no other extent, in respect the extent of the retour bore, *quod seipsum valet*, being an annualrent out of the lands, and therefore that the superior ought to have the double of the retoured duty, at the entry of the vassal, which was two years duty of the annualrent; this reason was not sustained, for the LORDS found, that for the entry of the vassal, neither one nor two years duty could be craved by the superior, but only the blench-duty of the reddendo, therefore the letters were found orderly proceeded.

Act. *Nicolson.*

Alt. ———.

Clerk, *Hay.*

Fol. Dic. v. 2. p. 334. Durie, p. 506.

1696. February 25.

EARL OF CASSILIS *against* KENNEDY.

No 5.

RELIEF is not a full year's rent, but only a favourable rent, viz. the retoured duty; and when a superior enters an appriser, he is entitled to a full year's rent by Parliament 1469, c. 36, but he is not entitled both to a full year's rent and to relief.

Fol. Dic. v. 2. p. 334. Fountainhall.

* * This case is No 26. p. 9309. *voce* NON-ENTRY.

Relief is *debitum fundi*; See PERSONAL AND REAL.

Relief betwixt principal and cautioners; See CAUTIONER.

Relief betwixt *correi debendi*; See DEBTOR AND CREDITOR.

See APPENDIX.