

FEU-DUTIES.

1629. *March 26.* *ROLLO against MURRAY.*

A PENSIONER having a pension granted to him, by the Bishop of St Andrews, and the feu-duty of some lands payable by the feuer to the Bishop, being assigned to the pensioner, for payment of the pension, whereupon the pensioner having charged the present feuer of the land, who had lately bought the same from the old feuer, for payment of the said feu-duty, resting unpaid diverse years before he had acquired the feu; it was found that the pensioner could not charge by any personal charge, or execution, the said feuer, for payment of the said feu-duties, of any years owing before the acquiring of his right, but prejudice to seek the same really against the ground, by poinding, or otherwise: Likeas the pensioner, July 8. 1629, pursuing for poinding of the ground, for the said feu-duty owing before that singular successor obtained the right of the lands; it was then found, that the ground was poindable for the years, not only since he acquired his right, but also for the years preceding, and that there was no necessity to pursue him who was then heritor, for payment of the same.

Act. ——— Alt. *Rollock.* Clerk, *Scot.*
Fol. Dic. v. 1. p. 296. 297. Durie, p. 442.

1630. *July 21.* *MR ARCHIBALD MONCRIEFF against LADY BALNAGOWN.*

MR ARCHIBALD being pensioner to the King of a duty, to be taken out of the feu-duties of the lands of Ferne, disponed in feu by the King to the Laird of Balnagown, and which feu-duties were assigned to him for payment of the said pension, and the Laird of Balnagown having given sub-feus to his sub-vassals, for payment of certain feu-duties to him, and these feu-duties payable to him by his sub-vassals being disponed again to the Lady, and she being charged by the

No 1.

A superior cannot insist against an intruder for the feu-duty of more years than those of his intrusion. But bygone feu-duties may be followed out by poinding of the ground, against singular successors.

No 2.

A personal action is competent to the superior for payment of feu-duties, not only against the original feuer and his representatives,

No 2.
but also a-
gainst singu-
lar successors.

pensioner to pay the feu-duties, wherein the principal feuer was addebted by his infestment to the King, seeing the said principal feuer was irresponsable; she suspending, that she was not obliged therein, but the principal feuer; and that she could not be personally charged; the LORDS found, that seeing she had right to the duties payable by the sub-vassals to the principal feuer, that the King as superior, and his pensioner, who had the King's right, might personally charge her to pay the said feu-duties, addebted by her author to the King; and that he needed not be casten off, to poind the ground therefor, seeing he might either poind or charge her personally as intromitter therefor, as he pleased.

Act. *Morat.*

Alt. ———

Clerk, *Scot.*

Fol. Dic. v. 1. p. 296. Durie, p. 532.

. Spottiswood reports the same case.:

THE King having feued the half land of the barony of Gaynes, by virtue of the act of annexation (it being holden of the Abbay of Ferne) to the Laird of Balnagowan, he set sub-feus thereof to be holden of himself, to others. The King disposed to Mr Archibald Moncrieff a pension of L. 224, to be paid out of the same feu-duties of Balnagowan's. Mr Archibald pursued one of Balnagowan's sub-vassal's for payment of the whole pension. He *alleged* he could be convened for no more than the feu-duty of his subaltern infestment. THE LORDS found, that as the King might seek his feu-duty out of the whole lands, or any part thereof, it being *debitum fundi*, so might the pensioner against any one of the sub-vassals. This was twice found, first against the old Lady Balnagowan, in July 1630, and after, against Hector Douglas, in December 1636.

Spottiswood, (FEU.) p. 131.

1632. February 24. The BISHOP of Galloway *against* HIS VASSALS.

No 3.
Found as a-
bove.

IN a pursuit against certain Vassals, holding their lands in feu, for payment of their feu-duties, which were craved by that summons, both *personalit actione*, and also to hear the ground poinded therefor, and the defenders *alleging*, that their rights of these lands being real, and the feu-duties really subject to be paid out of the ground, and for which the ground might be poinded by the superior, the Vassals were not subject, neither could be convened *personaliter* to pay the same, seeing they were not personally obliged thereto. This allegiance was repelled; and process and action also was sustained against the feuers, for decerning of them personally to pay the same, and that charges of