

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 disponed 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

horning might as well pass against them therefor personally, as decreet to poind the ground. No 3.

Act. *Mowat.*Alt. *Gilmore.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 296. Durie, p. 624.*

1639. *January 30.* COCKBURN of Chouslie *against* TROTTERS.

UMQUHILE Lyel of Stanipeth sets in feu his mill of Dunse, for payment of a yearly feu-duty of certain victual, to one Monylaws, which feu-duty is thereafter wadset to — Cockburn of Ryslaw, who thereafter disposes the same to — Cockburn of Chouslie, who obtains decreet against Alexander and James Trotters, who had comprised the feu of this mill and lands from Moneylaws, for payment of the bygone feu duties, which were owing; which decreet being suspended, and reduced, that the same could not have personal execution against the compriser, who was a singular successor, for any years preceding his occupation and possession of the mill comprised, the LORDS found, that the compriser being a singular successor, could not be holden *personalit actione*, to pay the feu-duties acclaimed, of any years before he came in possession of the mill, but since the time he was possessor; and sustained the sentence personally for all years since-syne against him, without prejudice of the parties action against the ground, also for the said bygones, as accords. And there being another reason of reduction, founded upon a bond granted by the same umquhile Lyell of Stanipeth, who feued the mill, at the time of the feu granted to this same Monylaws, whereby he obliged him to lead the mill-stones to the mill, whenever he should be required; and if he did it not, he should lose the feu-duty of that year; which clause of the bond, the maker thereof held as if it had been ingrossed in the body of the feu, which he confest to have been omitted out of the feu, by the forgetfulness of the writer thereof, albeit it was then accorded to have been insert therein betwixt the parties; and he subsumed, that he had required this successor to the feu, who had failzied, and consequently he should be assoilzied for payment of all the years duties where-in he was required, and failzied. THE LORDS assoilzied from this reason, because they found that this was a bond *extra corpus juris*, not insert within the body of the principal feu, and so could not bind a singular successor in the right of the feu: Albeit it was *replied*, that it was done at the time of the feu, and that the party had confest, that it ought to have been insert in the principal feu, when it was made, and so must be repute *pars contractus*, being *pactum incontinenter adjectum*, which was not respected by the LORDS. See PERSONAL AND REAL.

No 4.
Found in conformity with Rollo against Murray, No 1. p. 4185.

Act. *Nicolson & Trotter.*Alt. *Stuart & Craig.*Clerk, *Hay.**Fol. Dic. v. 1. p. 296. Durie, p. 873.*