

SECT. XII.

What Sum payable in Name of Entry-Money?

1630. July 17. LORD ERSKINE *against* EARL of HUME.

No. 59.

An appriser was bound to pay for his entry only according to the free profits, after deducting infestments of annual-rent, confirmed by the superior.

The Earl of Hume being charged to receive the Lord Erskine as superior to Sir George Hume of Manderston's lands, comprised by the Lord Erskine, who, as use is, suspending, that he ought to have a year's duty, and also payment of all the by-gone feu-duties, before he were holden to receive him, the Lords found, That seeing the superior had confirmed sundry infestments of annual-rent out of these lands comprised, which absorbed a great part of the yearly profits of the lands, the compriser was not subject to pay to the superior any further of his entry, but only according to the free profits which rested by and attour these annual-rents, which were confirmed by himself, albeit that the right of these annual-rents was also acquired by this same compriser, and albeit the annual-rent was disposed to be taken out of other lands, as well as the lands comprised; and found, that the not paying of the feu-duties for the by-gone years, addebted to the superior, was no cause to stay the compriser to be entered, seeing the compriser could not be personally obliged to pay these feu-duties, for any years owing by the vassal, before his comprising, and the superior nevertheless would not be prejudged therein, seeing, by his right, he might safely point the ground, against whatsoever possessor, for the same.

Act. Nicolson.

Alt. Belsher.

Clerk, Gibson.

Fol. Dic. v. 2. p. 409. Durie, p. 531.

1633. July 18. BRANDEN BAIRD *against* _____.

No. 60.

Found in conformity with the above.

No defalcation allowed on account of a subsisting life-rent on the estate.

In a suspension raised by the superior of charges raised against him, to receive a compriser, wherein the Lords found, That deduction ought to be made to the superior off the first end of the year's duty acclaimed by the superior, for his entry of the compriser, of so much proportionally as that land was affected with any burden which really was thereupon acknowledged, and flowing from the superior's own consent; and because the compriser alleged, That the lands were also affected with a life-rent, in the person of _____, yet living, during whose life-time the comprising could not be effectual to him, and which life-rent also was authorised with the superior's consent, and proceeded from him, therefore he desired some defalcation of the year's duty payable, and acclaimed by the superior, for his entry, which would not be profitable during the life-renter's

life-time; the Lords found, That they would grant no defalcation therefore, but declared, that whatever should be modified and decerned to be paid to the superior by the compriser, that the payment thereof should be superseded to the life-renter's decease, and that he should not be subject to pay the same, so long as she lived.

No. 60.

Act. Baird.

Clerk, Gibson,

Fol. Dic. v. 2. p. 409. Durie, p. 686.

1636. March 11. SCOT against ELLIOT.

No. 61.

No deduction allowed the compriser, though the lands be life-rented; but payment may be suspended until the life-renter's death, and in the mean time sufficient security.

*Fol. Dic. v. 2. p. 410. Durie.** * This case is No. 20. p. 201. *voce* ADJUDICATION.See No. 60. *supra.*

1636. March 29.

WILLIAM COWAN, Bailie of Stirling, against The MASTER of ELPHINSTON.

No. 62.

William Cowan charged the Master of Elphinston to infeft him in the superiority of certain lands. The Master having required of him a year's duty, conform to the act of Parliament, as the lands paid, the Lords found the charger could pay no more to the superior but a year's duty of that which he was to get himself when he was entered; which was only so much feu-duty paid to him by his sub-vassals, and not a year's duty of the lands which pertained not to him but to his sub-vassals.

*Fol. Dic. v. 2. p. 409. Spottiswood, p. 56.** * Durie's report of this case is No. 21. p. 202. *voce* ADJUDICATION.

A similar case is reported by Durie, 15th February, 1634, Monkton against Yester, No. 20. p. 15020.

1637. March 30. PATERSON against MURRAY.

No. 63.

Thomas Paterson having charged Walter Murray, superior of the lands of Crobelaw, to receive him therein, upon his comprising thereof, deduced against John Hoppringle, as lawfully charged to enter heir to Sir James Pringle of Gallashiels, his father, for the sum of 2300 merks, addebted by the said umquhile Sir James to him; which charge being suspended by Walter Murray, upon these reasons, that Sir James, from whose son, as charged to enter heir,

If the debt in the comprising be small, the Lords will modify the year's rent proportionally.