

## No 5.

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

1665. July 19. MR JAMES WINERHAM *against* LADY IDINGTON.

MR JAMES WINERHAM pursues the Lady Idington personally, for feu-duties out of certain lands liferented by her. It was *answered, non relevat*, for any years before the Lady's possession, because feu-duties may be pursued, either really, by pointing of the ground, or personally, against the intromitters with their profits; and because the feu-duties are as the yearly rent; yet that cannot be extended further, than during the years the possessors intromitted. The pursuer *answered*, that the whole profits being liable for the whole feu-duties, whether of that, or preceding years, the Lady was liable, not only for the years of her possession, but for bygones.

THE LORDS repelled the allegiance, and found the Lady liable personally, only for the years of her possession.

*Fol. Dic. v. 1. p. 296. Stair, v. 1. p. 299.*

\* \* \* Newbyth reports the same case :

MR JAMES WINERHAM, as one of the heirs-portioners of Mr William Kelly, pursues the Lady Idington for payment of the feu-duties of that portion of land of Eastbarns, commonly called Switherdale; and concludes payment against her of the feu-duties of the saids lands upon this mids, that she has intromitted, and has been in the possession of the saids lands, and labouring the same with her own plough. It was *alleged*, she could only be liable for payment of the feu-duties for the years wherein she did intromit, and not for preceding years. It was *replied*, that the duties being real, and she being heritor and intromitter with the rents, she ought to be liable for payment of the feu-duties, albeit of years preceding her intromission, especially since she has intromitted with much more than will satisfy the feu-duty. THE LORDS found she was only liable personally for the years of her own intromission; and the pursuer might point the ground for preceding years.

*Newbyth, MS. p. 37.*

1696. February 25.

TOWN-TREASURER of EDINBURGH *against* The CO-HEIRS of SHEINS, &c.

## No 6.

A feu-duty was payable in victual. Found that where the superior dwelt without the barony, the vassal was

THE TOWN-treasurer of Edinburgh pursues the Co-heirs of Sheins, and sundry others, their vassals, in the Burrow-muir, for delivery of their victual (*ipsa corpora*) in time coming, and paying the highest prices for bygones, conform to the *reddendos* of their charters. *Alleged, imo*, They have been in use, past memory of man, never to deliver the bolls themselves, but allenarly the fiars,