No. 54. adjudications till the late act of Parliament, and a year's duty is only due in apprisings by the statute of King James the Third, anent apprisings; and as to the non-entry duties; 1*mo*, By the foresaid act 1584, donatars are declared free of the feu-duties, due by forefault persons; *ex paritate rationis* they must be free of non-entry duties; 2*do*, As in apprisings or adjudications, superiors must enter summarily, only with reservation of the non-entry duties, which must be known and liquidated by the extent of the debtor's lands; so the same must hold no less in this case.

The Lords found that there was no year's rent due upon presentation, but that the superiors, mediate, or immediate, were obliged to receive them *gratis*, by virtue of the act of Parliament 1584, and that that act of Parliament could not be extended to liberate the donatar from the non-entry duties, but that they could not stop the entry; and therefore ordained the Lord Montgomery to receive the donatar, but prejudice of his non-entry duties by way of action against the donatar.

Fol. Dic. v. 2. *p.* 409. *Stair, v.* 2. *p.* 777.

1702. *February* 13. CREDITOR of SETON *against* SETON.

No. 55.
Where the superior is debtor, he is bound to receive the adjudger *gratis*.

George Seton of Barns having granted an heritable bond for 5,000 merks to Robert Seton in Tranent, forth of his lands, whereon Robert was infeft; and a creditor of his having adjudged this right from his son; he pursues the said George Seton of Barns, the debtor, to make payment; who alleged, you cannot validly renounce, nor dicharge, not being infeft. Answered, The right being base, holden of the granter, I am content for capacitating me to accept a charter and be infeft. Replied, You being an adjudger, and so a singular successor, I am willing to receive you; but, by the act of Parliament 1469, and act 1669, you must first pay me a year's rent of the subject and sum adjudged. Duplied, This is good law, and is due *ex natura feudi*, if you were not the debtor and personally liable, and bound to infeft me, my heirs and assignees; and though you got it, I could repeat it again by your personal obligement to pay, *et frustra petis quod mox est restituendum;* and by the civil law, the creditor had the *actio contraria pignoratitia*, by which he recovered all the expenses he wared out in the thing impignorated. Triplied, The obligation to receive assignees is only understood of the assignee to the bond before the cedent has taken infeftment, which is clear in ward-holdings, where that clause will not exclude recognition, if the vassal should infeft one base without obtaining the superior's consent; and if a creditor in a personal bond die, his heir or executor cannot uplift the money without a service or confirmation; neither will he force the debtor to repay him the expense he gave out in making up his title. The Lords considered, if the superior were a singular successor to the first granter of the right, there could be no doubt but he might exact a year's rent; but here the debtor in the annual-rent continued superior. Next, some made a difference between his seeking a charter in order to continue the infeft-

ment, and one seeking an entry and infeftment in order to extinguish, renounce, or validly convey, seeing the debtor in this last case requires it for his own security. *3tio*, The Lords thought, that though cautious and wary creditors did insert a clause in their rights, that the granter should enter them *gratis*, and that when any casualities of life-rent-escheat, non-entry, or the like, fell in their hands, as superiors, they should dispone the same to the vassal, yet that was only adjected *ad majorem cautelam et ex superabundanti*; and therefore the plurality found, that the superior here being debtor, he was bound to receive this adjudger *gratis*. No. 55.

Fol. Dic. v. 2. p. 409. Fountainhall, v. 2. p. 145.

1760. *July* 10.

LOCKHART of Carnwath *against* SIR ARCHIBALD DENHAM.

No. 56.
Heirs of entail, though not heirs of line to the last infeft, must be entered as heirs, not as singular successors, the superior having acknowleged the entail by a charter and infeftment.

Sir William Denham, in the year 1711, executed an entail of his estate of Westshiells, in favour of himself, and a certain series of heirs, under strict irritant and prohibitive clauses *de non alienando*, &c.

In 1726, Sir Robert, the first institute, having neglected to insert the provisions and irritant clauses of the entail in his general service, was found, by decree of the Court of Session, to have incurred an irritancy, and to have forfeited all right to the estate, for himself and his descendants.

In consequence of this decree, Sir Archibald, the next substitute, served himself heir of tailzie to Sir William; and as a part of the estate held of Mr. Lockhart, he took a charter from him, which contained a clause, That every heir of entail shall be obliged to pay a year's rent for his entry, unless he be at the same time heir of line to the person who died last vest and seised; and accordingly Sir Archibald paid £.200 Sterling to Mr. Lockhart, as a composition for a year's rent.

The decree of the Court of Session was reversed upon an appeal, and the estate was adjudged to Sir Robert Denham, son to the former Sir Robert, who likewise took a charter from Mr. Lockhart, containing the same clause; and the composition money paid by Sir Archibald was allowed to him at accounting with Sir Robert.

Sir Archibald again succeeded to the estate upon failure of Sir Robert and his descendants; and Mr. Lockhart brought a declarator of non-entry against him; in which the following question occurred, Whether Mr. Lockhart was bound to give a charter to Sir Archibald, who was not heir of line to Sir Robert, the person last vested and seised, without payment of the year's rent, in terms of the two charters containing the clauses above noticed?

Pleaded for Mr. Lockhart: Relief is a well established casuality of superiority, as old as feudal rights themselves. When a superior receives the new vassal, he has from the beginning been entitled to a year's rent. As this casuality was due even when the heir of the former vassal was entered, much more was it claimable