

1712. December 11.

The MASTER of the CHURCH and BRIDGE-WORK of ABERDEEN *against* The MASTERS of the KING'S COLLEGE.

## No. 42.

A superior obliged to enter an University, who had acquired right to an adjudication of lands for debt, though he would lose the non-entry duties, &c. because an University dies not.

Andrew Skeen having purchased the lands of Hilton by a decret of sale, disposed a part thereof to the Master of the Church and Bridge-work of Aberdeen, who charged the Masters of the King's College to enter him. The charge was suspended, on this reason, That the charger and his successors in office are public servants of the town of Aberdeen; so that if the suspenders were obliged to enter him, they should lose for ever all casualties of superiority; which is against the nature of feudal rights; for, anciently, feus were given only to the vassal, and such heirs as were named in the original feu; and the superior was obliged to receive no other; and albeit later laws, for the security of creditors, have laid superiors under the obligation of receiving apprisers, adjudgers, and purchasers at sales, yet all such singular successors are subject to the conditions and qualities of the original feus, and the superior hath the same casualties upon the death of the new vassal, and upon their delinquencies, as was competent to him before; so that there is no material prejudice to the superiors by these later laws: but if superiors were obliged to receive societies, which die not, there would be a very material damage to superiors against the nature of their rights; which is as much to be regarded as the right of the vassal; and there is no example of obliging superiors to accept such a vassal; and it has been the opinion of our most eminent lawyers of old, and of late, that, in such a case, some expedient ought to be found for salvaging the interest of superiors, and particularly of Craig and the Viscount of Stair.

It was answered: That albeit, anciently, superiors were not obliged to receive any but the heirs of the original investiture, and there is yet no law obliging them to accept resignations, yet the favour of commerce and creditors hath so far prevailed, that superiors are bound to receive singular successors, by legal diligence, by several laws and acts of Parliament since the days of K. Ja. III. Parl. 5. Cap. 36. *in fine*, whereby it is provided, that the Over-lord shall receive the creditor, or any other buyer, tenant to him, paying to him a year's mail as the land is set for the time; and, by posterior laws, the same benefit is introduced in favours of adjudgers and in favours of purchasers by sale; which laws are general, and do not express nor insinuate any exception; but, on the contrary, the law authorises societies and incorporations to purchase, and affords them actions for debts, and makes them liable for payment of debts; and consequently, when they have occasion to apprise, adjudge, or purchase at a sale, they have the benefit of those general laws; and as there is no decision obliging superiors to receive such vassals, there are as few in the contrary; and the practice has favoured incorporations; for it has never been known, that incorporations making purchases did not obtain entries from the superiors; and it would be of very bad consequence

to discourage mortifications and purchases by all corporations and societies, which tend very much for the advancing of public policy and pious uses; and which can have no such solid stock as the purchase of land; and neither can an equivalent be condescended upon that could consist with the security of societies, or have a justice and equality to answer the interest of all concerned; for if it should be proposed that a trustee should be named, then questions would arise how another trustee, in case of his decease, should be entered, or what should be the effect of that trustee's delinquency; for which there is no rule nor analogy in law; neither is the damage of superiors so considerable, for the duplication of the feu at the entry of an heir is a mere trifle, and non-entry and escheat are the only other casualties which the superior may lose; and these are merely accidental, such as may not happen in 100 years; and being casualties arising from delinquencies, it is what superiors are not to hope for nor expect; and as to the casualty of entering a singular successor, corporations may sell as well as buy, or their creditors may adjudge from them; so that the superior loses nothing on that side.

“The Lords found the suspender was obliged to enter the charger as any other vassal.”

The like occurred in the case of the Masters of the University of Glasgow, No. 16. p. 9296. *voce* NON-ENTRY, who had acquired an adjudication for sums far exceeding the value of the subjects adjudged; and Hamilton of Dalziel, the superior, declining to enter the University as being a society, “the Lords found, That he must either enter the University, or pay the debt, conform to the 36th act, Parl. 5. Ja. III;” but because the debt exceeded the value of the lands adjudged, “the Lords found, That he should only be liable for so much of the debt as extended to the true value of the lands; which they modified, and gave the superior his choice.”

*Fol. Dic. v. 2. p. 408. Dalrymple, No. 96. p. 135.*

1769. February 10. DUNDAS against DRUMMOND

George Drummond of Blair sold to Thomas Dundas of Fingask, the lands of Quarrol, which he held blench of Charles Elphinston of Cumbernauld; and granted disposition containing procuratory and precept, clause of absolute warrandice, &c.

Mr. Dundas did not execute the procuratory, but took infeftment on the precept.

Upon Mr. Drummond's death, Mr. Elphinston the superior, pursued a declarator of non-entry against Mr. Dundas, who brought an action against Mrs. Drummond, as representing her brother, concluding that she should be decerned to enter with the superior, and against the superior, to receive her.

No. 43.

Found that the heir of one selling with procuratory and precept, is not bound to enter with the superior.