

nor called in this process, for that were very summary and unjust; but it is enough for him to say, that the lands are feued, and that he can have no more by his comprising but the yearly feu-duty contained in the feuers' charter; neither can the feu be found null for the alleged defect of being let since the year 1606, without consent of the superior; for as the granter of the feu could never have been heard to quarrel the feu upon that ground, being his own deed, which he is held to warrant, no more can the compriser, who is a singular successor, succeeding only in that right which he had; the Lords found, That the compriser was held to pay a year's duty, according to the worth of the lands, to the superior, and that the offer of a year's duty of that which was contained in the feu-charter sufficed not, in respect that the feus are let since the act of Parl. 1606, which declares the feus thereafter let, without consent of the superior, to be null *etiam ope exceptionis*; which the Lords found must necessarily militate in favours of superiors, against any objecting such feus against them, whereby they may be prejudged in their superiorities, or of the casualties belonging thereto, as this duty of the entry was; albeit, so far as concerns the feuers, their rights were not prejudged by this interlocutor; but that they remained good *prout de jure*, as against the letters; so also against the comprisers of the letters' right; but the Lords declared, that they would, after trial of the yearly avail of the lands, reserve the modification to themselves, which they declared should be very moderate, in respect of the compriser's small benefit.

Act. Stuart.

Alt. Præsens.

Clerk, Hay-

*Fol. Dic. v. 2. p. 409. Durie, p. 881.*

1715. July 27. GOVERNORS of HERIOT'S HOSPITAL against HEBURN.

A vassal, who had greatly improved his feu lands, being to pay his entry, the Lords found, That the present rental (not that which was when the purchase was made) must be the rule.

*Fol. Dic. v. 2. p. 409. Bruce. Dalrymple. Forbes.*

\* \* This case is No. 54. p. 7986. voce KIRK PATRIMONY.

1740. December 17. NAESMITH against STORY.

Where, by a clause in a feu-charter, the superior had obliged himself, "When any casualties should fall by reason of non-entries, life-rent escheat, or any other way, to renounce and dispoise, *et per verba de præsenti*, renounced and dispoised the same, and all profits thereof, in favour of the vassal, his heirs and successors," it was thought, though there was no occasion to give judgment on it, that still action

No 64.

No. 65.

No. 66.  
Effect of a  
clause in a  
feu-charter  
discharging  
the superior's  
casualties.