

HEREZELD.

1766. *March* . SMITH *against* SUTHERLAND.

In a process of spuilie and damages, Isobel Smith, widow of a tenant in Caithness, against Captain James Sutherland, factor on the estate of Mey; this question occurred, how far herezelds were at all lawful; for the fact was, that, under that pretence, Captain Sutherland had carried off a horse from Isobel Smith's farm. It was allowed that they were in practice formerly, but it was contended that they were not now.

The authorities in the information for Captain Sutherland cited for the herezeld were,—*Qu. Att. c. 23*; Skene, *voce* Herezelder; Craig, *L. 2, tit. 8, § 32*, and *L. 2, tit. 9, § 38*; Balfour, p. 199; Stair, *B. II, tit. 3, § 80*; Bank., Vol. II. p. 146, § 69; Ersk., *B. II. tit. 6, § 10*; Dict., *voce* Herezeld; and it was proved, in sundry instances, that they were still in use to be granted in that country.

In the information for the widow, the legality of herezelds in general was faintly disputed; but it was alleged, that no herezeld is due, except by a tenant. In this case, Isobel Smith's husband was a cottar; and for this, reference was made to *Qu. Att. c. 23*; Balfour, p. 199; and Dict. *voce* Herezeld. Further, it was pleaded, that a herezeld, when paid, secured the tenant's representatives in another year's possession after the tenant's death: and for this was cited, Craig, *L. 2, tit. 8, § 32*, and *tit. 9, § 38*; Dict., *voce* Herezeld; Stair, *B. II. tit. 3, § 80*; Bankton, Vol. II. p. 104; Erskine, *B. II. tit. 6, § 10*.

Whereas in this case, notwithstanding the exaction of the herezeld, Captain Sutherland had turned her out.

The Lord Ordinary, (27th June 1774,) found, that, in this case, no herezeld was due; but the Lords avoided saying any thing in direct terms concerning the herezeld; and, (March 1776,) found, "That, in this case, Captain Sutherland did improperly take possession of the pursuer's horse; and that thereby, and being otherways interpellated by him, she was hindered from labouring her farm; therefore, that he was liable in damages."

1763. *November 16.* BELL of BLACKETHOUSE *against* DUKE of QUEENSBERRY.

BELL of Blackethouse held lands of the Duke of Queensberry: in the *redendo* was a clause, that the vassal should pay *optimum equum pro herezeldo*. Bell sold the lands in three parcels, and the purchaser of the largest parcel took his charter from the Duke, with the clause *pro herezeldo*; the second purchaser, however, refused to allow it to enter into his charter, in respect one herezeld only was due for the whole.

"The Lords, 16th November 1763, sisted process till the other two purchasers were brought into the field."