

1682. *December.*

The ARCHBISHOP of ST. ANDREW'S and The LAIRD of MONIMUSK *against* The MARQUIS of HUNTLY.

The Marquis of Huntly having obtained a charter from the late Archbishop of St. Andrew's of the land of Pitsichie, Invers, Ardneidly, and others, belonging to the Laird of Monimusk, which he held formerly of the See of St. Andrew's, and being distressed by the Marquis of Huntly for the feu-duties, he suspended both the Marquis and the Archbishop of St. Andrew's upon double-poining; and there being likewise a declarator raised at the instance of the Archbishop against Monimusk, who thought it not his interest to change his superior; the Lords found, That the Archbishop could not interpone and interject a superior betwixt him and Monimusk, the vassal, without the vassal's consent; and therefore preferred the Archbishop to the feu-duties.

Fol. Dic. v. 2. p. 406. Sir P. Home MS. v. 1. No. 312.

No. 12.

Found in conformity with Douglas against Torthorell, No. 10. p. 15012.

1741. *June 9.* SIR JOHN MAXWELL *against* M^cMILLAN.

The Lords found, That a superior cannot divide the superiority, or convey it to different persons, without the vassal's consent; for he has no power to deteriorate the condition of his vassal, by putting him to the expense of double entries, or by increasing the number of the persons to whom the feudal services are due.

Fol. Dic. v. 4. p. 312. C. Home. Kilkerran.

No. 13.

* * This case is No. 190. p. 8817. *voce* MEMBER OF PARLIAMENT.

1774. *August 5.* ROBERT DREGHORN *against* GEORGE HAMILTON.

Hamilton was proprietor of the Hall-mailing of Provan, and of the lands of East-mailing of Easter Cunshlee, and also of the lands of Wester-mailing of Easter Cunshlee, holden of the town of Glasgow.

Dreghorn having made a purchase from the Magistrates of Glasgow of those parts called the Easter-mailing of Easter-Cunshlee, and the Wester-mailing of Easter Cunshlee, brought a process of poining the ground against Hamilton and his tenants; in which the Lord Ordinary, "in respect the pursuer derives right from the town, and is not interposed between the town and the defender, decerned in terms of the libel, and also found expenses due."

Hamilton reclaimed to the Court, upon the following grounds: *Imo*, That the words of the feu-contract are exceedingly strong and express, that he should have

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Whether, in the case of lands once belonging to separate proprietors, but now to one, whose feu-contract bore a special *provisio*, that they were to be holden of the Magistrates and

No. 14.
Town-Council of a burgh, and their successors in office, for ever, without any mention of assignees, the superiority of one parcel may be conveyed to one purchaser, and the superiority of the remaining parcel to another?

the privilege of holding his lands of the city of Glasgow for ever, the Magistrates and the Town-council, and their successors in office, being mentioned; but not a word of assignees. Nay, there is more than an ordinary anxiety shewn to preserve *in perpetuum*, the connection between the town and vassal, from the clause following: "declaring, that any disposition or right, to be granted by the said George Hamilton, and his successors, of the said lands, to any other person, shall be with the burden of that person's holding the lands to be disposed to them, in feu of the town of Glasgow, for payment of the feu-duties fore-said, otherwise the right to be null and void;" and these mutual stipulations must equally stand good, both in law and equity. Besides, the Court will perceive the evident contradiction to the express terms of his feu-right, in which the pursuer is aiming to involve the defender.

But, *2do*, Even although the feu-contract should receive a different interpretation, and the town of Glasgow should be found at liberty to alienate the superiority, yet surely they are not entitled to multiply superiors upon their vassal. The Lord Ordinary has put his judgment upon this, that the pursuer is not interposed between the town and the defender; but the Court will also be careful to check, in the bud, this improper attempt at a multiplication of superiors, which is reprobated by the writers upon the law of Scotland, (see Craig, Lib. 11. Dieg. 11. § 18.; Stair, B. 3. L. 5. § 11.); and, besides, the question was solemnly determined by this Court, 9th June, 1741, Sir John Maxwell *contra* M'Millan, No. 13. p. 15016. and ever since that time, it has been understood to be the fixed law of the country.

The defender became the town of Glasgow's vassal in an estate, consisting not only of the lands, the superiority of which Mr. Dreghorn has acquired, but also of the lands of Hall-mailing of Provan, including therein the mansion-house of Provan, and the yards, &c. thereto belonging; and these lands all lie contiguous, and form together one commodious estate.

Now, what is the case here? The superiority of a part of this estate, viz. the two mailings of Easter Cunshlee, is conveyed to Mr. Robert Dreghorn, merchant in Glasgow; but the superiority of the Hall-mailing of Provan, upon which the mansion-house stands, is conveyed to Mr. John Clark, merchant in Glasgow; so that the defender finds himself in the disagreeable situation of having two superiors clapped upon him; one upon the lands containing his mansion-house, and another upon the lands adjacent.

Two different charters of confirmation, indeed, were granted by the Magistrates of Glasgow to the defender, to which he did not object, after they were written out, the expenses not being *tanti*; and, in fact, it was merely *in commodum* of the clerk; for, on the 21st of January, 1767, when those charters of confirmation were granted, there was one vassal and one superior for all the lands thus united into one estate; for it was not till after the confirmation, that the superiority of the estate was split, so as to multiply superiors upon the defender.

It is true that his lands did once belong to separate proprietors ; but being consolidated, and formed into an *universitas* in his person, and the town of Glasgow as sole superior, having confirmed his right to this *universitas*, it would be the greatest hardship imaginable, that, after much pains and care have been employed, and a high price paid for getting together a convenient estate, holding of one superior, and this has been homologated and approved of by the superior, it should be in the power of the superior to split and multiply in the manner that has been done.

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The law has not said that it is necessary for lands to have been one estate for any particular length of time, in order to give their proprietor a right to oppose the multiplication of superiors. This right commences *eo momento*, that there is one estate holding of one superior, although it should be made up of different lands. In fine, the defender maintains, that whenever there is an estate, belonging to one vassal, received by one superior, there can thereafter be no separation without the vassal's consent. And the general principle is much stronger in this case when consideration is had of the clause in the feu-contract, by which it is provided that the lands should be held for ever of the Magistrates of Glasgow, and their successors in office, without any mention of assignees.

The Court "refused the petition, and adhered to the Lord Ordinary's interlocutors."

Act. J. Boswell.

Fol. Dic. v. 4. p. 313. Fac. Coll. No. 131. p. 347.

1781. January 31. DUKE of MONTROSE against SIR JAMES COLQUHOUN.

No. 15

The Duke of Montrose having, with the design of creating freehold-qualifications, parcelled out the superiorities of certain lands, belonging in property to Sir James Colquhoun, among fourteen different persons, by granting them life-rent-rights, the Lords reduced these rights, in an action at the vassal's instance, on the ground of the prejudice he sustained from the undue multiplication of superiors.

Fol. Dic. v. 4. p. 312. Fac. Coll.

* * * This case is No. 195. p. 8822. *voce* MEMBER OF PARLIAMENT.