

that it should be lawful to Sir John to take his entry from the Crown. This charge being contemned, Sir John brought a declarator of tinsel of the superiority, in terms of his charge, and obtained decret in absence, 18th July 1771.

Of this decret, Brodie raised a reduction, and concluded, that Sir John ought still to be obliged to take an entry from him, when his titles to the superiority of Brimms should be completed.

In defence, Sir John pleaded, that the pursuer had no title to insist in the action, and that he condescended on no relevant reason of reduction.

The first was clear : the pursuer was heir of tailyie in the tailyied estate of Brodie, but this superiority belonged to the heir of line ; and no more belonged to the pursuer, than to any other man in Britain.

As to the second, his reasons of reduction were irrelevant : One was, That the special charge by Sir John, was to make up titles to the Lord Lyon, whereas the person last infeft in the superiority was his son Alexander. ANSWERED,—This was of no importance : the Act 1474 mentioned a charge, but any notice was sufficient ; and whether the person last infeft was the Lyon, or his son, the meaning of the charge was, to make up a title to his predecessor. Another was, that the Act 1474 related to heirs, and not to singular successors. ANSWERED,—Without saying what effect this distinction might have in the case of an heir of tailyie, one thing was clear, that if the Act 1474 did not afford a remedy, even as to a singular successor, no other act did where the heir in the superiority had not made up his titles, which was scarce to be thought. A third was, That whatever might be the case where a superior wilfully lay out, and did not make up his titles to the superiority, the Act did not apply to the case of the petitioner who lies out unentered, not by his fault, but by his misfortune, *viz.* by his not being heir in the superiority, but intending only to adjudge it for relief of debts which the heir of line was bound to relieve him of. ANSWERED,—The act was not intended to punish the superior : the object of it was to relieve the vassal ; and, in this case, unless Sir John was so relieved, he neither could let a tack, nor remove a tenant, nor be considered as proprietor of Brimms, in several respects.

The Lord Stonefield, Ordinary, having, 14th December 1771, repelled the reasons of reduction, and assoilyied the defender ; upon advising petition and answers, the Lords adhered.

1777. June 27. The MAGISTRATES of EDINBURGH *against* STRATTON.

A SUPERIOR, when he grants an original feu, may not only qualify it with such conditions as he thinks proper, but, when he renews it to the heir of the vassal, by precept of *clare*, may further burden it ; and if the vassal's heir accepts of a precept under these new conditions, they will be as binding as if contained in the original investiture. So the Lords thought with regard to an astriction of thirlage.