

No 195.

Division of
superiority
null, when
made without
consent of the
vassal.

1781. *January 31.*DUKE of MONTROSE, and Others, *against* SIR JAMES COLQUHOUN.

SIR JAMES COLQUHOUN is proprietor of certain estates in Dumbartonshire, which he holds of the Duke of Montrose, as superior; who having, with the design of creating freehold qualifications, parcelled out the superiorities of these lands among fourteen different persons, by granting to them liferent-rights, Sir James instituted against him and his disponees, a reduction of these rights, as being productive of an undue multiplication of superiors.

Pleaded for the defenders, *imo*, "Alienatio superioritatis permittitur dominis, dummodo vassali conditio in ea non sit deterior." This rule is delivered by Sir Thomas Craig, (*lib. 2. D. 11. § 35.*) and results from the first principles of law relative to property in general. If then no real damage arises to the pursuer from the present alienations, they ought to receive the sanction of the Court.

Those parts of the feudal law, which are now obsolete or abrogated, being overlooked, it is evident, that the connection of superior and vassal, imports only, on the part of the superior, an obligation to enter the heirs or singular successors of his vassal; and, on the part of the latter, that of acknowledging the former, by taking the holding from him, and paying the casualties of entry and relief, together with the ordinary annual prestations. In none of these respects does the condition of the pursuer become worse, in consequence of the present multiplication of superiors, by liferent infeftments, which are all liferents by constitution. For, as to the casualties, it appears, from the authorities of our lawyers, as if liferenters of this sort had not even the power of entering heirs; but it is clear, that the existence of a liferent, though by reservation, does not bar the fiar from the exercise of his right of superiority; and consequently leaves to the vassal an option of resorting to him for an entry; Craig, l. 2. d. 12. § 16. *Ib.*:d. 17. § 42.; Erskine, b. 2. t. 9. § 42. Since then such an option is reserved to the pursuer, his condition, in this respect, is nowise altered for the worse. And, with respect to the annual prestations, these wholly consist in blench duties of an elusory nature; and no effect of real moment can be produced in them by any multiplication of superiors.

Answered, It is a doctrine of the feudal law established in ours, "Ut vassalus pro uno feudo plures dominos habere non compellatur." *Consuet. feud. Stat. Rob. III. 9th June 1741*, Sir John Anstruther against Alexander Macmillan, No. 190. p. 3817. Hence a superior cannot convey his right of superiority, so as to interpose another person between him and his vassal. And hence that right is considered as a *jus individuum*, which of course falls to one only of several heirs-portioners.

The defenders have denied the wisdom or expediency of this principle, in relation to the present case; but their reasoning is erroneous. The power of

entering vassals is the characteristic of the right of superiority. Accordingly, though the infeftment of a person, interposed between the superior and vassal, is, *quoad* the right of superiority, void and null; yet this infeftment will carry in favour of the grantee, as a donatary or assignee, all the duties and casualties of superiority; and the only criterion of its nullity is, that it confers not the power of entering vassals; Lord Stair, b. 2. l. 4. § 5. Douglas of Kelhead against Vassals, 30th Jan. 1671, *voce* SUPERIOR and VASSAL. Every right of superiority, therefore, whether in liferent or in fee, necessarily comprehending the privilege of entering vassals, it is plain, that in this, as well as in other respects, the right of the liferenter, while it subsists, is exclusive of that of the fiar; which, meanwhile, remains dormant or suspended; Stair, b. 2. l. 6. § 8. And hence has arisen the general practice, that liferenters concur with fiars in granting charters or precepts of *clare constat*. Thus, it is evident, that the multiplication of superiors, which the liferent-conveyances in question were designed to create, would be attended with every effect belonging to the right of superiority; and, of course, would subject the pursuer to the obvious inconveniences which must result from a vassal's subordination to thirteen additional superiors.

The Court "sustained the reasons of reduction."

In a reclaiming petition against this judgment, the defenders endeavoured to found an exception from the general rule thereby adopted, upon this alleged specialty, that several of the subjects in question, though by the indulgence of the superior, they have been contained in one charter, were, however, different tenements, and held for different prestations. But the Court refused this petition, without answers.

Lord Ordinary, *Gardenston*. Act. *Baillie*. Alt. *Lord Advocate, H. Erskine*. Clerk, *Robertson*.
S. *Fol. Dic. v. 3. p. 427. Fac. Col. No 25. p. 46.*

* * * This case was appealed.

THE HOUSE OF LORDS, 19th February 1782, 'ORDERED and ADJUDGED, That the appeal be dismissed, and the interlocutors complained of be affirmed.'

1781. February 17. SLOAN LAURIE *against* HAMILTON and CAMPBELL.

No 196.

CAMPBELL of Skerrington held certain lands, and among others, the two-merk lands of Horsecleugh, of the Earl of Dumfries, who, in 1774, conveyed the superiority of these lands to different persons in liferent, for the purpose of giving them freehold qualifications. Campbell was ignorant of these proceedings till within a short time of the election 1780, when he brought a redue-