

No. 45. and it gives him the same privilege with his author, which was to enter as an heir. Now, while his author was not bound to take infeftment in her own name, as her right expressly contained assignees, she was at liberty to assign it as it stood; and the superior cannot refuse to give infeftment upon it, to any assignee in whose person it may now stand, upon payment of the same casualty which she was bound to pay.

Observed on the Bench: The heir of a vassal is entitled to be entered as such, on payment of the *duplicando* or other composition exigible from an heir, but he cannot demand such an entry as will enable him to introduce a singular successor in his place, without payment of a year's rent. If, therefore, instead of a precept of *clare constat*, he demands a *charter*, which may be assigned, the superior is not obliged to comply with this, unless satisfaction is given as to the year's rent.

The Lords "alter the interlocutor reclaimed against, and find, that the respondent Alexander Brown, upon receiving the charter before mentioned, must pay to the pursuers the usual composition as a singular successor; also find him liable in expenses."

To which they adhered, (February 21,) by refusing a petition, without answers.

Lord Ordinary, *Bannatyne*.

Act. *Rae*.

Agent, *T. G. Wright, W. S.*

Alt. *Corbet, Morison*.

Agent, *Ja. Skinner*.

Clerk, *Walker*.

F.

Fac. Coll. No. 147. p. 329.

SECT. XI.

Composition due by Singular Successors.

No. 46.

A superior is not obliged to infeft a compriser until he is paid a year's duty of the lands.

1614. February 3. DALMAHOY against BOTHWELL.

In an action of suspension pursued by Dalmahoy against Adam Bothwell, who had comprised some lands holden of Dalmahoy, the Lords found, that Dalmahoy was not obliged to give him infeftment, except he were paid the hail year's duty of the lands the year of the comprising, conform to the act of Parliament made by King James III. *anno* 1469. Cap. 36.

The contrary before, betwixt the Lord Dundas and Ninian Macmorren.

Fel. Dic. v. 2. p. 409. Kerse MS. p. 79.

No. 47.

Whether the payment of annual-rent

1623. December 5. PATON against STUART.

In an action of double-poinding betwixt Paton and Stuart, the Lords found a charter produced for the one party, whereby he desired to be answered and obey-

ed, to be null, albeit it was clad with present possession, and divers other years preceding the year controverted, because the same was granted to be holden of the superior, and not confirmed; which nullity was admitted in that same judgement summarily, without necessity of reduction; and albeit the charter and sasine proceeded upon a contract, wherein the disponent was obliged to give the buyer infestment, either to be holden of himself, or of the superior, in respect the charter and sasine used in process were given to be holden of the superior.

No. 47.
by the superior to the holder of a charter, is equivalent to a confirmation of his right?

December 5.—In the action mentioned in the aforesaid page, Paton *contra* Stuart, the party producer of the charter, and sasine being given to be holden of the superior, being secluded by the Lords' interlocutor, from his right, as being null, for want of confirmation; he replied, that the same was confirmed by the superior, likeas the superior had allowed of his right, by making payment to him of that annual-rent, whereof he had acquired the charter and sasine, which was also sufficient as a confirmation: This was also repelled, because the other party in that cause had comprised for a lawful cause, from the giver of this charter, and disponent of the annual-rent, the giver's right, which being comprised, albeit after the charter and sasine, yet being before the confirmation, was a just impediment, which made the confirmation unprofitable, and was a mid intervening deed, which stayed the same, to be drawn back to the time of the charter; likeas any possession acquired from the superior, before the comprising, would never be of the force of a confirmation, to make the deed, which was null, to become valid against a third party, who had comprised; which the Lords found relevant.

Act. Foulis.

Clerk, Scott.

Durie, p. 85, 86.

1628. *July 22.*

BORTHWICK *against* HILSTON.

All the superior can claim for comprising, be they ever so many, is but one year's rent.

No. 48.

Fol. Dic. v. 2. p. 409. Durie.

* * This case is No. 35. p. 15030.

A similar decision is reported by Stair, Seton *against* Rosswell, No. 7. p. 297. *voce* APPRISING; and by Gilmour, No. 5. p. 3473. *voce* DILIGENCE.

1634. *July 22.*

HAY *against* BAILLIES OF ABERDEEN.

Magistrates of a royal burgh are not entitled to any composition for entering singular successors.

No. 49.

Fol. Dic. v. 2. p. 409. Durie.

* * This case is No. 37. p. 15031.