

PERSONAL AND REAL.

S E C T. I.

*Debita fundi.*1590. August —. LAIRD OF ST MONANCE *against* TENANTS.

THE Laird of St Monance being minor, and his lands fallen in ward, there was decerned be a decret of the Lords, the sum of 500 merks for his sustentation. He having pursued the donatar of the ward, viz. the Laird of Keltie, his goodsir, principal donatar, his father, brother Mr Thomas, Mr David, and Andrew, to pay the said sums *pro rata*, according to the portion of the land they occupied; they having suspended his letters, it was found by the LORDS, that the said Laird had good action to pursue the tenants and acceptors of the ward lands for his aliment that was modified for him, 'quia fuit onus reale et non personalæ et sequebatur fundum,' except so much of the lands as appertained to his mother, as her conjunct fee.

Fol. Dic. v. 2. p. 62. Colvil, MS. p. 453.

No 1.
The aliment of a minor out of ward lands, found to be *debitum fundi*, so that he might pursue the occupiers of the lands for it.

1628. March 12. LAIRD OF LAURISTON *against* SHERIFF of the MERNES.

IN an action of suspension betwixt the Laird of Lauriston and the Sheriff of Mernes, the LORDS found, that any party, who had obtained precepts out of the chancellary, upon his retour, for taking sasine of lands whereto he was retoured, as heir to his predecessor, was subject to pay the quantity of the relief, upon a personal charge, at the king's officers' instance, viz. the treasurer, against him to that effect, or that the ground might be pointed therefor, or the

No 2.
The casualty of relief is *debitum fundi*.

No 2. Sheriff might be compelled to pay the same, who for his relief might either point the ground, or charge the party obtainer of the precept out of the chancery, personally to pay the same, and which the LORDS found the parties might be compelled to pay, albeit he never took sasine by virtue of the said precept, conform to the 74th act of Parliament, 1587; and albeit the lands lay in non-entry ay and while sasine were taken. See RELIEF CASUALTY OF.

Fol. Dic. v. 2. p. 62. Durie, p. 359.

* * Spottiswood reports this case :

ALL Sheriffs, &c. are charged in their accounts to the Exchequer, according to the book of *responde*; and therefore if one take out a precept of sasine out of the chancery, albeit he never take sasine thereupon, yet the Sheriff will be charged for the duties of the land, because of the *responde*, and he will have his relief of the party obtainer of the precept, not only by pointing of the ground, but will also have personal action against him for the same.

Spottiswood, (FISCUS.) p. 132.

No 3. 1635. November 14. DICKSON against A DONATAR.

THE casualty of marriage is *a debitum fundi*.

Fol. Dic. v. 2. p. 62. Durie.

* * This case is No 4. p. 2169., *voce* CHARGE TO ENTER HEIR.

1664, July 13. GRAHAM of Hiltoun against The HERITORS of CLACKMANNAN.

No 4.
Land-tax not
debitum fundi,
and therefore
not good a-
gainst singu-
lar successors.

GRAHAM of Hiltoun having obtained a decret against the Heritors of Clackmannan, for a sum of money imposed upon that shire, by the committee of estates; the Heritors of the shire have raised a review, and alleged, that this decret being obtained before the commissioners, in the English time, he has liberty to quarrel the justice thereof, within a year, conform to act of Parliament; and now alleges that the said commissioners did unjustly repel the defence proponed for singular successors within the said shire, that they ought not to be liable for any part of the said imposition, having acquired their rights long after the same, and before any diligence was used upon the said act of the committee. It was *answered*, that there was no injustice there, because this being a public burden imposed upon a shire by authority of Parliament, it is *debitum fundi*, and effecteth singular sussesors, especially seeing the act of the committee of estates was ratified in the Parliament 1641; which parliament and committee, though they be now rescinded, yet it is with express reservation of