

## SECT. XII.

## What Sum payable in Name of Entry-Money?

1630. July 17. LORD ERSKINE *against* EARL of HUME.

## No. 59.

An appriser was bound to pay for his entry only according to the free profits, after deducting infestments of annual-rent, confirmed by the superior.

The Earl of Hume being charged to receive the Lord Erskine as superior to Sir George Hume of Manderston's lands, comprised by the Lord Erskine, who, as use is, suspending, that he ought to have a year's duty, and also payment of all the by-gone feu-duties, before he were holden to receive him, the Lords found, That seeing the superior had confirmed sundry infestments of annual-rent out of these lands comprised, which absorbed a great part of the yearly profits of the lands, the compriser was not subject to pay to the superior any further of his entry, but only according to the free profits which rested by and attour these annual-rents, which were confirmed by himself, albeit that the right of these annual-rents was also acquired by this same compriser, and albeit the annual-rent was disponded to be taken out of other lands, as well as the lands comprised; and found, that the not paying of the feu-duties for the by-gone years, addebted to the superior, was no cause to stay the compriser to be entered, seeing the compriser could not be personally obliged to pay these feu-duties, for any years owing by the vassal, before his comprising, and the superior nevertheless would not be prejudged therein, seeing, by his right, he might safely point the ground, against whatsoever possessor, for the same.

Act. Nicolson.

Alt. Belsher.

Clerk, Gibson.

Fol. Dic. v. 2. p. 409. Durie, p. 531.

1633. July 18. BRANDEN BAIRD *against* \_\_\_\_\_.

## No. 60.

Found in conformity with the above.

No defalcation allowed on account of a subsisting life-rent on the estate.

In a suspension raised by the superior of charges raised against him, to receive a compriser, wherein the Lords found, That deduction ought to be made to the superior off the first end of the year's duty acclaimed by the superior, for his entry of the compriser, of so much proportionally as that land was affected with any burden which really was thereupon acknowledged, and flowing from the superior's own consent; and because the compriser alleged, That the lands were also affected with a life-rent, in the person of \_\_\_\_\_, yet living, during whose life-time the comprising could not be effectual to him, and which life-rent also was authorised with the superior's consent, and proceeded from him, therefore he desired some defalcation of the year's duty payable, and acclaimed by the superior, for his entry, which would not be profitable during the life-renter's