

horning might as well pass against them therefor personally, as decreet to poind the ground. No 3.

Act. *Mowat.*Alt. *Gilmore.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 296. Durie, p. 624.*

1639. *January 30.* COCKBURN of Chouslie *against* TROTTERS.

UMQUHILE Lyel of Stanipeth sets in feu his mill of Dunse, for payment of a yearly feu-duty of certain victual, to one Monylaws, which feu-duty is thereafter wadset to — Cockburn of Ryslaw, who thereafter disposes the same to — Cockburn of Chouslie, who obtains decreet against Alexander and James Trotters, who had comprised the feu of this mill and lands from Moneylaws, for payment of the bygone feu duties, which were owing; which decreet being suspended, and reduced, that the same could not have personal execution against the compriser, who was a singular successor, for any years preceding his occupation and possession of the mill comprised, the LORDS found, that the compriser being a singular successor, could not be holden *personali actione*, to pay the feu-duties acclaimed, of any years before he came in possession of the mill, but since the time he was possessor; and sustained the sentence personally for all years since-syne against him, without prejudice of the parties action against the ground, also for the said bygones, as accords. And there being another reason of reduction, founded upon a bond granted by the same umquhile Lyell of Stanipeth, who feued the mill, at the time of the feu granted to this same Monylaws, whereby he obliged him to lead the mill-stones to the mill, whenever he should be required; and if he did it not, he should lose the feu-duty of that year; which clause of the bond, the maker thereof held as if it had been ingrossed in the body of the feu, which he confest to have been omitted out of the feu, by the forgetfulness of the writer thereof, albeit it was then accorded to have been insert therein betwixt the parties; and he subsumed, that he had required this successor to the feu, who had failzied, and consequently he should be assoilzied for payment of all the years duties where-in he was required, and failzied. THE LORDS assoilzied from this reason, because they found that this was a bond *extra corpus juris*, not insert within the body of the principal feu, and so could not bind a singular successor in the right of the feu: Albeit it was *replied*, that it was done at the time of the feu, and that the party had confest, that it ought to have been insert in the principal feu, when it was made, and so must be repute *pars contractus*, being *pactum incontinenter adjectum*, which was not respected by the LORDS. See PERSONAL AND REAL.

No 4.

Found in conformity with Rollo against Murray, No 1. p. 4185.

Act. *Nicolson & Trotter.*Alt. *Stuart & Craig.*Clerk, *Hay.**Fol. Dic. v. 1. p. 296. Durie, p. 873.*