der the Earl's father's hand, he had renounced and discharged all these casualties. *Answered* for the Earl, None of these obligements can tie me, unless I represent my father, the granter; neither is a perpetual discharge of a feu-duty a *habilis modus* to extinguish it, nor is it real *contra fundum*, but merely personal upon the granter and his heirs; yea it is against the nature of a feu to discharge the recognizance and acknowledgment which the vassal owes to the superior; and it is *inter essentialia feudi* to have a *reddendo*; and to discharge it *in perpetuum* is equivalent as if it had none at all; yea, it will not so much as militate against the granter's successor for any years, but allenarly so long as the granter continues to have right to the superiority; for if he be legally denuded, then his singular successor may claim the feu-duty; neither will the discharge exclude him, reserving their recourse against the granter and his heirs. *Replied*, The Earl must be presumed to be heir, unless he instruct by what singular title he possesses; and till then he cannot quarrel his father's discharge. THE LORDS found, that *affirmanti incumbit probatio*, and seeing they libelled and replied on his representing, and that being their *medium concludendi*, they must prove it. If the Earl were pursuing his vassal, he behoved to shew his title; but in this process of declarator against him, he needed say no more but deny his representation, and if they succumbed, he would be assoilzied from this process; for the LORDS unanimously agreed that the foresaid perpetual discharge of the feu-duties and other casualties and astriction were merely personal, and only binding during the granter's lifetime, or his right, but could not operate against a singular successor.

No 84.
Found that this was merely personal, and binding only during the granter's life.

Fol. Dic. v. 2. p. 68. Fountainhall, v. 2. p. 72.

1731. *December* 11. Lady CASTLEHILL *against* Sir JAMES STEWART of Coltness.

No 85.

A PROPRIETER having disponed part of his barony, holding blench of himself, became obliged, under a penalty, to enter the heirs *gratis*, and likewise to dispone *gratis* the liferent escheats of his vassals in these lands, so oft as the same should fall into his hands; this clause was not found real against singular successors in the superiority.

Fol. Dic. v. 2. p. 68.

1734. *July* 24. GARDEN of Bellamore *against* Earl of ABOYNE.

No 86.

IN an original feu-charter, though woods were disponed along with the lands, there was this remarkable restriction laid upon the vassal, "That it shall not be leisom for him or his heirs to cut, sell, or give away, any of the trees, but allenarly for their own particular use and their tenants;" but this clause did not

No 86. enter the sasine. The superior afterwards, by a personal deed, discharged the said restriction. The question occurred, If this discharge was good against a singular successor in the superiority? The singular successor *pleaded*, That the woods here were truly reserved, and nothing given to the vassal but the *usus*, and that a discharge could not transfer the superiority, or any of its accessories. The vassal *pleaded*, That he was infeft in the lands and woods, and that the clause was no other than a restriction on his property, calculated that he might not interfere with his superior in the sale of his woods, to lower the price, by overstocking the market, and that restrictions may be discharged by any personal deed. The Lords found the discharge effectual against the singular successor.

Fol. Dic. v. 2. *p.* 69.

1740. *December* 17. Nasmyth *against* Storry.

No 87.

Where a superior had, by a clause in a feu-charter to his vassal, obliged himself, when any casualties should fall by reason of non-entry, liferent escheat, or any other way, to renounce and dispone, and *per verba de præsenti* renounced and disponed the same and all profits thereof in favour of his vassal, his heirs and successors; this clause was found not to be effectual against singular successors; for, as there is no record of charters, singular successors could not otherwise be safe.

As to the effect of this clause between the vassal and the granter and his heirs, see Superior and Vassal.

Fol. Dic. v. 4. *p.* 69. *Kilkerran*, (Personal and Real.) *No* 3. *p.* 383.

1748. *November* 8. Nasmyth *against* Storry.

No 88.

A superior, in granting a feu-charter to his vassal, obliged himself, his heirs and successors whatsoever, to enter and receive the heirs and assignees of the vassal, without any other payment than doubling the feu-duty, and renounced for himself and said heirs all casualties that might happen to fall by non-entry or any other way. Another person having purchased the superiority, it was questioned, whether the above-mentioned clauses were real, and affected a singular successor; and if he could be obliged to engross them in a new charter, to be granted to a successor in the feu? The conveyance to the new superior contained a clause, excepting from the absolute warrandice the feu-rights and charters granted by the disponer and his predecessors, with which rights the conveyance was expressly burdened; but declaring, That this exception should import no ratification of these rights, which the disponee might quarrel and reduce on any competent ground of law. The Lords doubted much on the ge-