

Wherever the real one would be available, the personal will likewise ly ; but, where the effect of the real one is lost, *quoad* the tenant, as it undeniably is by his removal from the grounds, the personal action can no longer subsist, nor is in this in the least prejudicial to the superior. Had the tenant remained in the possession, he could only have been liable to the extent of his term's mail; and, as the succeeding tenant becomes liable to the same suit, for the like extent, the superior loses nothing of his former security ; his real right is as entire as before, the vassal remaining still personally liable, and the immediate possessor is subject both to the real and personal diligence, to the extent of his term's mail. Further, if the tenants were personally bound to pay the superior's feu-duty, from the single fact of their having possessed the ground, How is it possible they could ever liberate themselves therefrom, but by actual payment to the superior? And yet it cannot be disputed, but that, if the tenant had paid his rent to his own master, the vassal, he would be no longer liable to the personal suit at the superior's instance ; which is demonstration that he is not properly debtor to the superior, nor bound, in a personal action, farther than he is liable to the real distress. Besides, the establishing the pursuer's doctrine would be attended with several inconveniencies ; one of which would be, that no tenant could safely pay his rent, until such time as his master produced full acquittances from the superior of his feu-duties, &c.

THE LORDS adhered.

*C. Home, No 96. p. 150.*

No 8.

1739. June 29.

WALLACE against FERGUSON.

THE vassal, by accepting of a feu-charter, containing the clause *reddendo inde annuatim*, becomes thereby liable personally for the feu-duties, whether the charter is granted to him originally, or if he is a purchaser from the original vassal ; and therefore, a feu-vassal was found personally liable for the feu-duties, even after he had sold his land, and the purchaser in possession, by a minute of sale, but without getting a charter from the superior. See APPENDIX.

*Fol. Dic. v. I. p. 297.*

No 9.

\* \* \* Kilkerran reports the same case :

FOUND, That a vassal is by the feu-contract personally liable to the superior for the feu-duties, and that he remains so, even after he has sold the lands, until the new purchaser shall be received by the superior.

Nor was there occasion to give judgment on an argument pleaded for the vassal, viz. That a vassal may, by our law, liberate himself by abandoning his right ; for suppose the law stood so, where the vassal possesses *per alium*, it is the same to the superior as if he possessed himself.

*Kilkerran, (FEU-DUTY.) No 2. p. 189.*

## FEU-DUTIES.

In what manner feu-duties are affected by public burdens; *see* Cruik-  
shanks against Morison, 15th January 1678, Stair, v. 2. p. 591., *voce* PUBLIC  
BURDEN.

The Kings Advocate against Fairlie, 1st February 1675, Stair, v. 2. p. 606. *voce*  
MARRIAGE, (AVAIL OF.)

*See* HERITABLE and MOVEABLE.

*See* APPENDIX.