nor called in this process, for that were very summary and unjust; but it is enough for him to say, that the lands are feued, and that he can have no more by his comprising but the yearly feu-duty contained in the feuers' charter; neither can the feu be found null for the alleged defect of being let since the year 1606, without consent of the superior; for as the granter of the feu could never have been heard to quarrel the feu upon that ground, being his own deed, which he is held to warrant, no more can the compriser, who is a singular successor, succeeding only in that right which he had; the Lords found, That the compriser was held to pay a year's duty, according to the worth of the lands, to the superior, and that the offer of a year's duty of that which was contained in the feu-charter sufficed not, in respect that the feus are let since the act of Parl. 1606, which declares the feus thereafter let, without consent of the superior, to be null *etiam ope exceptionis*; which the Lords found must necessarily militate in favours of superiors, against any objecting such feus against them, whereby they may be prejudged in their superiorities, or of the casualities belonging thereto, as this duty of the entry was; albeit, so far as concerns the feuers, their rights were no tprejudged by this interlocutor; but that they remained good *pro tanto de jure*, as against the letters, so also against the comprisers of the letters' right; but the Lords declared, that they would, after trial of the yearly avail of the lands, reserve the modification to themselves, which they declared should be very moderate, in respect of the compriser's small benefit. No 64.

Act. *Stuart.* Alt. *Præsens.* Clerk, *Hay.*

Fol. Dic. v. 2. *p.* 409. *Durie, p.* 881.

1715. *July* 27. GOVERNORS of HERIOT'S HOSPITAL *against* HEPBURN.

No. 65.

A vassal, who had greatly improved his feu lands, being to pay his entry, the Lords found, That the present rental (not that which was when the purchase was made) must be the rule.

Fol. Dic. v. 2. *p.* 409. *Bruce. Dalrymple. Forbes.*

*** This case is No. 54. p. 7986. *voce* KIRK PATRIMONY.

1740. *December* 17. NAESMITH *against* STORY.

No. 66.
Effect of a clause in a feu-charter discharging the superior's casualities.

Where, by a clause in a feu-charter, the superior had obliged himself, "When any casualities should fall by reason of non-entries, life-rent escheat, or any other way, to renounce and dispone, *et per verba de præsenti*, renounced and disponed the same, and all profits thereof, in favour of the vassal, his heirs and successors," it was thought, though there was no occasion to give judgment on it, that still action

No. 66. of declarator of non-entry was competent to the superior; for, otherwise, he could have no compulsitor upon the vassal to take a charter; and that if, in such process, the vassal should obstinately lie out, the non-entry would be incurred; but if the vassal was willing to take a charter, the superior would be obliged to discharge by-gones.

As to the effect of such clause against a singular successor in the superiority, *vide* No. 87. p. 10276, *voce* PERSONAL AND REAL.

Kilkerran, (CLAUSE) *No.* 3. *p.* 121.

1742. *February* 27. COUPER *against* STEWART.

No. 67.
Whether a year's rent be due to the superior for receiving an adjudger of an heritable bond?

Pyper of New Grange having granted an infeftment of annual-rent on the lands of New Grange to Simpson, and the annual-rent having been adjudged from Simpson by Gilbert Stewart, he charged Mr. David Couper, now proprietor of New Grange, as superior in the annual-rent, to receive him.

Mr. Couper suspended the charge; and, at discussing, the question being, Whether or not the superior was entitled to a year's rent of the subject adjudged? that is, a year's interest; it was, on the one hand, said, that as, by the statute in the reign of James III. *anno* 1469, which first obliged the superior to receive an appriser, the superior was thereupon to get a year's rent of the subject apprised, so the same was, by act 1669, declared to take place in adjudications; and as there was nothing in any statute insinuating that, in any case, the superior was to receive the adjudger of any subject, without getting a year's rent of the subject adjudged, it did not occur from whence the exception could be inferred in the case of an adjudger of an heritable bond; the rather, that, at the date of the act 1669, the modern infeftments of annual-rents were as much in use as they are now, and yet the act is general, which must therefore be understood to comprehend those as well as the annual-rents of the ancient form. True, where the superior is granter of the annual-rent, as it is in such case usual to throw in a clause, obliging the superior to receive the heir of the vassal *gratis*, so, where it is omitted, it may be presumed omitted *per incuriam;* and, for that reason only, that the superior was debtor in the annual-rent, the Lord Fountainhall observes it to have been found by plurality of voices, February 13, 1702, Seton *contra* Seton, No. 55. p. 15046, that the superior was bound to receive *gratis;* adding, at the same time, that it was the opinion of the Court, that if the superior had been singular successor to the first granter of the right, there would have been no doubt but he would have been entitled to exact a year's rent.

It was, on the other hand, said, that as, without doubt, the statute of James III. could only be understood to comprehend the ancient form of annual-rents, which were proper feudal rights, and not the annual-rents now in use, which are but modern inventions for security of money, not then known; so, when the act 1669 came to declare, that the superior of lands, annual-rents, and others adjudged,