No. 67.

should not be holden to grant any charter for infefting the adjudger, till such time as he be paid of the year's rent of the lands and others adjudged, in the same manner as in comprisings, it was not thereby intended to make an extension of the law, but only that the superior should have the same demand against the adjudger as formerly he had against the compriser: And that such has been the notion the lieges have entertained of this matter, is clear from this, that there is no instance where ever an adjudger of an heritable bond was found liable to the superior in a year's rent.

It was *separatim* observed, that, in this case, the superior, who was proprietor of the lands, as well as superior of the annual-rent, could not redeem, without paying the annual-renter all that was due to him, and consequently the damage sustained by him through paying this year's rent of the annual-rent, should he now be found liable in it; it were therefore absurd to make him pay to the superior what the superior would be obliged to repay to him in case of redemption.

The Lords "found the superior not entitled to the year's duty of the annual-rent, and repelled the reason of suspension."

Fol. Dic. v. 4. p. 314. Kilkerran, No. 5. p. 529.

1769. *February* 2. MAGISTRATES of INVERNESS *against* DUFF and Others.

No. 68.
Clause for doubling the feu-duty on the entry *cujuslibet hæredis vel assignati.*

The Magistrates of Inverness had granted feus of certain lands and fishings, belonging to the burgh, in favour of the original vassals, and their heirs and assigns whatsoever, with a clause of reddendo in these words:

"Reddendo inde annuatim prefatus , heredes sui et assignati antedicti nobis, nostrisque successoribus, summam 13 solid. et 4 denar. monetæ Scotiæ ex unaquaque dicta acra, ad duos anni terminos, nec non duplicando dictam feudifirmam primo anno introitus cujuslibet hæredis aut assignati ad dictas terras, aliaque præscripta, prout usus est feudifirmæ duplicatæ, pro omni alio onere," &c.

The feus having come into the persons of singular successors, a declarator of non-entry was pursued by the Magistrates, in which the question arose, Whether the defenders were liable in a year's rent for their entry, or if they were entitled to be entered for payment of double the feu-duty, in terms of the above clause?

Pleaded for the defenders: Whatever may be the rule of law as to the extent of the composition payable by singular successors, it is lawful for the superior to restrict it by voluntary agreement. And, in this case, the composition is plainly restricted to the duplicando of the feu-duty. The feus are granted *hæredibus et assignatis quibuscunque.* Under this clause, the Magistrates may be compelled to receive all singular successors of the vassals, voluntary or legal. And if the term *assignati* be understood in that sense, in one part of the charter, it cannot receive a different explanation in another part of it.

No. 68.

Neither can it be confined to assignees before infeftment. Craig informs us, that recognition cannot take place in fees taken to assignees, III. 3. 31.; which seems to exclude so limited a construction. Indeed, the terms of the reddendo itself are exclusive of it in the present case. The duplicando of the feu-duty is declared to be payable at the entry *cujuslibet hæredis aut assignati*, which must of necessity apply to entries *after* infeftment; for, before infeftment, no composition can be due, seeing the singular successor may infeft himself upon the unexecuted precept in the feu-charter.

Answered: By the principles of the feudal law, the superior could not be obliged to receive singular successors, unless there was an express clause in the grant for that purpose; and such clauses were always qualified by the condition of paying a composition to the superior. Afterwards, when, by statute 1469, C. 36. the superior was obliged to receive adjudgers, the composition was fixed at a year's rent; and the right to this composition is reserved in the statute of ward-holdings, which extends the privilege to all singular successors.

This right may no doubt be renounced by the superior; but, being so firmly established in law, renunciation of it will not be presumed from a single inaccurate expression in a charter, such as occurs in the present case. Indeed, it would appear, that the addition of *assignati* was made without meaning. The duplicando is declared to be payable at the entry of heirs and assigns, *prout usus est feudifirmæ duplicatæ;* though nothing can be more certain, than that the entering a singular successor for double the feu-duty is directly contrary to practice, and no instance can be pointed out where any singular successor, even in these feus, was received upon such terms.

The expression *assignati*, therefore, can have no meaning in the charters, unless it is understood of assignees before infeftment; and so Lord Stair informs us it has frequently been interpreted, B. 2. T. 4. § 32.; and Lord Bankton, B. 2. T. 4. § 34. Indeed, the point was expressly determined, Lady Carnegie *contra* Lord Cranburn, No. 58. p. 10375. *voce* PERSONAL AND TRANSMISSIBLE, and Ogilvie *contra* Kinloch, No. 65. p. 10384. IBIDEM; nor is this doctrine contrary to what is laid down by Craig, in the passage referred to; for though assignees are singular successors, yet all singular successors are not assignees; on the contrary, assignation is properly applicable to personal, not to real rights.

"The Lords found the defenders liable to the town of Inverness for a full year's rent, upon getting an entry from the town."

Act. *Lockhart.* Alt. *Rae, Cosmo Gordon,* Advocatus *Montgomery.*

Fol. Dic. v. 4. *p.* 314. *Fac. Coll. No.* 81. *p.* 329.

1775. *February* 14. JOHN AITCHISON *against* THOMAS HOPKIRK and Others.

No. 69.
A year's free rent is exigible for the

The defenders are proprietors of some houses and yards in the town of Airdrie. The different pieces of ground upon which these houses stand were acquired by