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

them, or their authors, from the authors of Mr. Aitchison of Rochsalloch, upon charters and feu-rights; by which there is a feu-duty payable to the superior, with a condition, that the feu-duty should be doubled at the entry of each heir; but nothing is said as to the entry of a singular successor.

No. 69. entry of a singular successor, either in lands or houses, where such entry is not taxed.

The feuers were willing to enter with Mr. Aitchison, and to pay him the original feu-duty, or the double thereof, at their entry; but this he refused, insisting for a whole year's rent, both of the lands and houses; and brought a declarator of non-entry against them before this Court.

The point was determined, after a hearing in presence, and upon considering reports relative to the practice, which last chiefly weighed with the Court.

"The Lords find, That the respondent, as superior, is entitled for the entry of singular successors, in all cases where such entries are not taxed, to a year's rent of the subject, whether lands or houses, as the same are let or may be let at the time, deducting the feu-duty and all public burdens, and likewise all annual burdens imposed on the lands by consent of the superior, with all reasonable annual repairs to houses, and other perishable subjects."

Act. *M'Queen.* Alt. *Crosbie.* Clerk, *Campbell.*

Fol. Dic. v. 4. *p.* 315. *Fac. Coll. No.* 157. *p.* 29.

*** A similar case was decided, 25th November, 1791, Anderson against Milne, not reported. See APPENDIX.

1794. *June* 6. THOMAS BRISBANE *against* LORD SEMPILL.

No. 70. A singular successor found liable in a year's rent for his entry, altho', by the original charter, conveying the lands to heirs and *assignees*, it was provided, that so often as the lands should fall into the hands of the superior, "by reason of life-rent, escheat, non-entry, *or otherwise for whatsomever occasion*," they were of new to be made over to

In 1705, John Brisbane disponed the estate of Bishoptown to John Walkinshaw, his heirs and assignees.

The disposition, *inter alia*, contained the following clauses:

"The said lands of Bishoptown, &c. to be holden of me, my heirs and assignees, in feu-farm and heritage, for ever, for payment to me and my foresaids of the sum of twelve pennies Scots money, in name of feu-duty, yearly at the term of Whitsunday, beginning the first term's payment thereof at the term of Whitsunday next to come, and the heirs of the said John Walkinshaw, doubling the foresaid feu-duty the first year of each of their entries to the foresaid lands; and the singular successors of the said John Walkinshaw being obliged for payment to me and my foresaids of the sum of ———— the first year of each of their entries to the said lands, in satisfaction of all farder that can be exacted or craved by me and my foresaids forth of the same."

The scored blank in this clause is thus taken notice of in the testing clause: "And it is further declared, That the blank left for filling up the composition to be paid for the entry of singular successors is, with consent, scored, as above, before subscription."

After the procuratory of resignation, and other usual clauses, the deed proceeds: