

private rights acquired thereby, such as this. The pursuer answered, that every imposition of this nature, though by authority of Parliament, is not *debitum fundi*, but doth only effect the persons having right the time of the imposition, whereanent the mind of the late Parliament appeareth in so far as, in the acts thereof, ordaining impositions to be uplifted during the troubles, singular successors are excepted. It was *answered, exceptio firmat regulam in non exceptis*, such an exception had not been needful, if *de jure* singular successors had been free. It was *answered*, many exceptions, though they bear not so expressly, yet they are rather declaratory of a right, then in being, than statutory, introducing a new right.

No 4.

THE LORDS found singular successors free, and reduced the decreet *pro tanto*.

*Fol. Dic. v. 2. p. 63. Stair, v. 1. p. 212.*

1670. January 8.

MR LAURENCE CHARTERS *against* PARISHIONERS OF CURRY.

MR LAURENCE CHARTERS, as executor confirmed to Mr John Charters minister of Curry his father pursues the parishioners for 1000 pounds for the melioration of the manse of Curry, conform to the act of Parliament 1661, which is drawn back to the rescinded act of Parliament 1649. It was *alleged* by the parishioners, absolutor; *first*, Because the meliorations of the manse were long before any of these acts, which do only relate to meliorations to be made thereafter, and for any thing done before *œdificium solo cedit*, and it must be presumed to be done by the minister *animo donandi*, there being no law when he did it, by which he could expect satisfaction; *2dly*, Several of the defenders are singular successors, and so are not liable for reparations done before they were heritors. The pursuer answered, that albiet these reparatsons were done before the year 1649, yet there being subsequent acts of Parliament, obliging the heritors to make the manse worth 1000 pounds, if these former reparations had not been made, the heritors of the parish would have been necessitated to make up the same, and so *in quantum sunt lucrati tenetur*. *2dly*, The said acts of Parliament contained two points, one is, that whereas the intrant minister paid to his predecessor 500 merks for the manse, and his executors were to receive the same from his successor, the said acts ordained the heritors to free the successor, as to which the present heritors can have no pretence; and as to the allegiance, that they are singular successors, the acts oblige heritors, without distinction, whether they are singular successors or not.

THE LORDS found the Parishioners only liable for the 500 merks paid by the minister at his entry, and found, that at the time of the reparation, the Parishioners not being liable, were not then *lucrati*; and are not liable by the subse-

No 5.

Singular successors are not liable for reparations bestowed on the minister's manse before they were heritors.

- No 5. quent acts, which extend not *ad præterita*; neither did they find the singular successors liable, but that the heritors for the time were only obliged.

*Fol. Dic. v. 2. p. 62. Stair, v. 1. p. 659.*

\* \* \* Gosford reports this case.

MR LAUREECE CHARTERS, as executor to his father, who was minister at Curry, pursuing the present heritor for payment of L. 1000 for building and repairing the manse, upon the late act of Parliament; it was *alleged* for some of the heritors, that they were singular successors, and could not be liable, seeing the said expenses were not declared to be *debitum fundi*, and a real debt, which the Lords did sustain; albeit, it was *answered*, that the act of Parliament ordains all heritors to be liable without distinction. *2d*, It was *alleged* for those that were heritors, the time of the reparation, that they could not be decerned but only for 500 merks, which was the most that heritors were liable to the time of the said reparation, which was before the year of God 1649, at which time, by act of Parliament, it was extended to L. 1000. THE LORDS did likewise sustain this allegiance, and restrict the sum to 500 merks, notwithstanding it was *alleged*, that the charges were *utiliter* expended for the heritors, who after the act of Parliament 1649 might have been compelled to make the same.

*Gosford MS. No 223. p. 89.*

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HAMILTON of Monkland *against* MAXWELL.

- No 6. UPON the report of Redford, betwixt Hamilton of Monkland and Maxwell, the LORDS found, that a debt due by a person who had disposed his land upon the account that a manse was built, and that he was resting his proportion of the charges, is not *debitum fundi*.

Clerk, *Hamilton*.

*Fol. Dic. v. 2 p. 62. Dirleton, No 274. p. 133.*

1675. June 23. & July 16.

DOUGLAS of Kilhead *against* His VASSALS.

- No 7. THE retoured duties which are only due before citation in the general declarator of non-entry, are *debita fundi*, but the superior's claim to the full duties thereafter, is only a personal action against intromitters,

*Fol. Dic. v. 2. p. 62. Stair. Dirleton.*

\* \* \* This case is No 36. p. 9318. *voce* NON-ENTRY.