

No 9. 1676. July 6. BLAIR of Kinfawns *against* Mr THOMAS FOWLER.

IN the case betwixt Sir William Blair of Kinfawns and Mr Thomas Fowler, it was found, that an action, at the instance of the executors of a minister, for building a manse, and refunding the expenses of the same, is competent against the heritors for the time and their representatives; but not against a singular successor, and that it is not *debitum fundi*.

Reporter, *Newbyth*.

Clerk, *Gibson*.

Fol. Dic. v. 2. p. 62. Dirleton, No 372. p. 182.

* * * Gosford reports this case :

IN a reduction and suspension of a decret obtained and assigned to the minister by the relict of Mr James Oliphant against Kinfawns, before the Sheriff, for payment of his proportion of the reparation of the building of a manse, upon this reason, that the decret was most unjustly pronounced against him, who was a singular successor, and had no interest in the parish the time of the building of the manse, for which expenses the heritors for the time were only liable after valuation; but, that debt not being *debitum fundi*, but only due by act of Parliament, which imposeth it upon the present heritors, can never affect a singular successor, as was decided in the case of Guthrie against the L. Mackerston, No 74. p. 10137. It was *answered* for the charger, That the decret could not be reduced nor suspended upon that ground, because, by the act of Parliament, it is provided, that buildings and meliorations of manses should be valued at the incumbent's death, and belonged to the executors, and were payable by the heritors the time of the valuation; but so it is that Kinfawns was then an heritor, and as, in law, he would be obliged to pay that same proportion, if the manse had not been built, so he now enjoying the benefit thereof, he ought to be liable; and 'as to the case of Guthrie and Mackerston, it doth not meet that which is now in controversy, seeing he was neither heritor the time of the incumbent's decease, nor of the valuation. THE LORDS having considered this as a leading case, did suspend and reduce the decret upon the reasons libelled, notwithstanding of the answer, being chiefly moved upon the reasons, that the act of Parliament did not at all make the expenses of building and repairing of manses to be a real debt affecting a singular successor, after valuation of their lands, that they shall be liable to the incumbent or his executors; and if it were otherwise interpreted, no singular successor could be secure after a lawful purchase, seeing there is no register of such burdens, or of discharges thereof. 2do, If ministers be clearly founded in law, and never pursue the present heritors during their abode in the parish, nor after they are gone out, it is presumed that they have been satisfied, upon which grounds Kinfawns was most fa-

vourable, there being no less than 30 years since the building of the said manse, and that if he was not paid, it was more just that he being *in mora et supina negligentia*, should pursue the former heritor or his successor, than a singular successor who was no ways obliged.

No 9.

Gosford, MS. No 874. p. 555.

* * A similar decision was pronounced, 2d February 1672, Guthrie against Laird of Mackerston, No 74. p. 10137, *voce PERICULUM.*

1687. December 3. EARL OF SOUTHESK *against* MAXWELL.

No 10.

THE Earl of Southesk pursuing Maxwell of Hills for a dry multure, payable out of his lands to a mill belonging to Southesk in Annandale, which he had appraised for cautionry, he declared on oath, that he had possessed only 12 years, and had left it in the tenant's hands; yet the LORDS advising this oath, found it *debitum fundi*, and decerned against him.

Fol. Dic. v. 2. p. 62. Fountainball, v. 1. p. 487.

1694.

Mr JAMES MOIR, Minister at Frasersburgh, *against* LORD SALTON, LAIRD OF TECHMUIRY, and his Other Parishioners.

No 11.

THE LORDS found, that the expense bestowed by the minister in repairing his manse was not *debitum fundi*, and affected none but the heritors and possessors at that time, and not singular successors, as was found, Mr Lawrence Charteris, No 5. p. 10165.; and found his right to foggage and grass was an annual prestation that could far less descend to singular successors; but demurred a little if my Lord Salton could be reputed one, seeing he had bought in the rights on his grandfather Philorth's estate.

Fol. Dic. v. 2. p. 62. Fountainball, v. 1. p. 601.

1724. July 22.

Colonel JOHN ERSKINE of Carnock *against* CHARLES BELL Writer to the Signet.

No 12.

MR SCOT Sheriff-clerk of Edinburgh, in his contract of marriage with Marion Cuninghame, became obliged to employ 10,000 merks on good security to her in liferent, and to the children of the marriage in fee; and for their farther

Arrears of a widow's jointure are a real burden on her husband's estate.