parish, residing upon their estates, and within the community respectively;" varying the interlocutor of Lord Auchinleck.

Act. Ch. Brown. *Alt.* J. M'Laurin.

1777. *July* 4. JOHN MACKENZIE of Delvin *against* SIR HECTOR MACKENZIE.

SUPERIOR AND VASSAL—TAILYIE.

Found that a superior of entailed lands was obliged to enter the heir of entail, who in this case was likewise the heir of the former investiture, and lineal successor in the lands, on receiving a *duplicando* of the feu-duty, and was not entitled to demand from him a year's rent, or other composition, reserving, however, to the superior and his successors in the superiority, any right which they may have to a year's rent, or other composition, on the entry of any future heir of entail, not an heir of investiture prior to the tailyie.

[*Faculty Collection, VII.* 445; *Dict., App. I, Superior and Vas., No.* 2.]

AUCHINLECK. When the superior grants a charter to a man and his heirs, all that he can demand is a duplicando; but when the vassal chooses to make the estate go to another series, who are called *heirs*, but in truth are *disponees*, they ought to be considered in the light of disponees.

MONBODDO. Formerly there was a *delectus personæ* in vassals, as now in tenants. Then the circuit of entering by adjudication came in, and at last, by the statute 20th Geo. II., the superior was obliged to enter the vassal without any circuit at all. The defender is heir of the investiture, and must be received; but the superior is entitled to insist for a reservation. It would be *fraudem facere legi*, if the superior was not allowed to secure himself, in the event of what is equivalent to a sale.

COVINGTON. The superior may be a loser, but that is no more than a consequential loss. As the law has obliged the superior to enter heirs of entail, and has made no distinction as to the nature of such heirs, I do not see how the superior can have any claim.

KAIMES. It is difficult to argue, when, as I may say, the law alters and leaves us in the lurch. Formerly the superior was not obliged to acknowledge any stranger. Now his benefit arises from acknowledging strangers. This is just the reverse of what was anciently the case. The law says that entails may be made. *Where* is the superior's loss, unless it be that the law has authorised entails?

BRAXFIELD. I could have wished to know what was the practice. The law, as now modelled, stands thus,—The superior is entitled to a renewal of investiture; if to an heir, he receives a duplicand of the feu-duty; if to a stranger, he receives a year's rent. He is not bound to receive a stranger without pay-

ment of a year's rent, whether the settlement be by a sale or by a gratuitous disposition. The difficulty, in this case, is, that the person who demands the entry is also heir of investiture. It matters not whether the form of the title is singular or not. Strip the deed of substitution to strangers, and the superior might be obliged to grant a charter even with prohibitive clauses, &c. The superior does not suffer by the line of succession being continued. The heir must insert the whole substitutions. He is allowed to do that, but the statute 1685 does not hurt the interest of the superior; on the contrary, it has reserved it. *Query*, May not the superior throw in a reservation? If he does not, he cannot afterwards claim, for the granting of the first charter is an enfranchisement of all the subsequent disponees.

PRESIDENT. How can the vassal be obliged to pay for an event which may never happen? Suppose that an entail should not prohibit to sell, then the composition ought to be less. By what rule are we to walk? The Act of Parliament, 1685, excepts *casualties*, but that can only be understood of *casualties* actually existing. If the decision of *Lockhart of Carnwath*, pronounced with great unanimity, did not stand in the way, I should think it very reasonable that, whenever the line is cut, the casualty should be paid.

COVINGTON. It would be hard to anticipate the right of a future superior by decreeing the benefit *now*, and to burden the present heir with what a future disponee should pay. I do not think that the single decision in the case of *Carnwath* is sufficient to establish the law.

JUSTICE-CLERK. I am perfectly clear that the superior is not entitled to exact from the present heir.

GARDENSTON. The decision of *Carnwath*, if held as law, gives great ground for the present demand; for the superior demands from the heir a year's rent, because, by giving the charter, he exempts the future disponees.

On the 4th July 1777, The Lords found that Mr Mackenzie, the pursuer, is not entitled to a composition at present; reserving any claim that the superior may have on the succession opening to an extraneous substitute, and to the said substitute his defences as accords.

Act. A. Elphinstone. *Alt.* Ilay Campbell.

Reporter, Justice-Clerk.

1777. *July* 8. SIR WILLIAM GORDON *against* MRS LINDSAY HAY.

TAILYIE.

The institute, or disponee, ought not, by implication from other parts of the deed of entail, te be construed within the prohibitory, irritant, and resolutive clauses, laid upon the heir of tailyie.

[*Faculty Collection, VII.* 452; *Dict.*, 15,462; *App.* 1, *Tailyie, No.* 2.]

COVINGTON. I have not the least doubt that old Sir Robert Gordon intend-