

## SCOTLAND.

## COURT OF SESSION.

The Governors of Heriot's Hospital - *Appellants* :  
 J. C. Ross - - - - - *Respondent*.

WHEN a vassal sub-feus his possession for its full adequate value at the time, it is only a year's sub-feu duty, and not a years rent upon the value improved by buildings, which he is bound to pay to his superior, as a composition for an entry to a singular successor.

THE Respondent held under the Appellants a piece of ground in Edinburgh, at the yearly feu-duty of three bolls of wheat and three bolls of barley: The composition payable to the Appellants as superiors on the entry of a singular successor was not taxed. The Respondent, upon his entry in 1804, paid a composition of 30*l.* sterling, which was the nominal value of the land. In 1807 the Respondent sub-feued the land to builders, who covered the ground with houses. The duty reserved upon the sub-feus was about 420*l.* per annum, and the gross rental of the houses built and building was stated to amount to 3,000*l.* per annum. The feudispositions to the sub-vassals stipulated for a duplicando of the sub-feu duty on the entry of every heir and singular successor, and prohibited sub-infeudation. In the year , the Respondent being desirous to sell his interest in the feus, applied to the Appellants to assess the composition upon the

1820.

HERIOT'S  
 HOSPITAL  
 v.  
 J. C. ROSS.

1820.

HERIOT'S  
HOSPITALv.  
J. C. ROSS.

entry of a purchaser. The Respondent proposed to pay 420*l.* the amount of one year's sub-feu duty. The Appellants refused to accept less than one year's full value of the land, as improved and increased by the buildings. The Respondent thereupon brought an action against the Appellants, seeking a declaration that purchasers were entitled to demand an entry from the Appellants, as superiors, on payment of 420*l.* in full of the composition exigible by the superior upon the entry of the singular successor; and that the Appellants and their successors, as superiors, should be decerned to enter purchasers and singular successors of the Respondent, as vassals, accordingly on payment of 420*l.* or the amount of sub-feu duties for one year, in full of non-entry duties, casualties of superiority, and other claims for entry of singular successors.

The Appellants contended in their pleadings in defence, that they were entitled to a full year's value at the time when the entry was to be given.

The Lord Ordinary and the court, upon a reclaiming petition, after condescendences and a hearing, delivered judgment for the Respondent. Upon a further reclaiming petition, praying the court to alter the interlocutor pronounced, so far as to find that the Appellants were entitled for the entry of an adjudger or purchaser to one year's sub-feu duty, and one year's average value of the whole profits derived by the pursuer and his successors from his sub-feus, by casualties or in any way whatever, the court by an interlocutor, pronounced on the 6th of June 1815, adhered to their former judgment\*.

\* See the Report in the Fac. Coll. vol.      p.

From these several interlocutors the appeal was presented:

1820.

HERIOT'S  
HOSPITAL

v.  
J. C. ROSS.

For the Appellants:—The *Lord Advocate*,  
*Mr. Warren*, (and *Mr. J. Miller*.)

For the Respondents:—*Sir S. Romilly* and *Mr. Moncrieff*.

The authorities cited were,—

For the Appellants, *Aitchison v. Hopkirk*, Fac. Coll. 14 Feb. 1775; *Jordanhill v. Craufurd*, 13 Feb. 1752; *Kilkerran*, 395, and *Lord Elchie's*, voce *Tack*, No. 18. *Alison v. Ritchie*, 3 Feb. 1730; *Dict.* vol. 2, p. 419; *Bankton*, B. 2, tit. 9, § 6; *Erskine*, B. 2, tit. 6; § 27. *Cowan v. Lord Elphinstone*, 20 March 1636; *Stair*, B. 3, tit. 2, § 24 and 27; *Ersk.* B. 2, tit. 11, § 24. *Erskine v. Earl of Home*, 17 July 1630, *Durie*. *Brandon Baird*, contra, 18 July 1633, *Gibson*; *Ersk.* B. 2, tit. 5, § 7 and 12. *Cathcart v. Tait*, 15 Feb. 1782, *Fac. Coll.*; *Kaimes's Stat. Law*, voce *Feu*. *Almond v. Hope*, 9 March 1639, *Durie*. *Gray v. Allan and Taylor*, 1810.

For the Respondents,—

*Heriot's Hospital v. Ferguson*, July 30, 1773, *Fac. Coll.* vol. 5, No. 83; *Elchie's Decis.* voce *Feu*; *Craig*, 2. 20. 32; *Stair*, 3. 2. 27; *Bankton*, 3. 10. 19; *Ersk.* 2. 12. 24. *Ramsay v. Earl of Rothes*, March 23, 1622; *Durie*. *Paterson v. Murray*, 30 March 1637, *Durie*; *Stair*, 2. 4. 66. *Monkton v. Yester*, 15 Feb. 1634, *Durie*. *Cowan*

1820.  
 HERIOT'S  
 HOSPITAL  
 v.  
 J. C. ROSS.

v. *Lord Elphinstone*, 26 March 1636, Durie; Spottiswoode's Practicks, p. 56. *Almond v. Hope*, 9 March 1639, Durie. Stair, 2, 4. 32; ib. 4. 45. Bankton 2, 4. 66.

The case stood over for judgment from the time of the argument in 1818 until the end of the Session 1820, when the Lord Chancellor, in moving the judgment, observed, that it was a question of great importance and difficulty; that he had bestowed upon it, at various times since the argument, much and repeated attention, but he could not venture to advise the House to disturb the judgment.

The result of his deliberation was, that the majority of the judges below had decided the case properly.

Judgment affirmed.

24th July 1820.