No 2. Sheriff might be compelled to pay the same, who for his relief might either poind the ground, or charge the party obtainer of the precept out of the chancellary, personally to pay the same, and which the LORDS found the parties might be compelled to pay, albeit he never took sasine by virtue of the said precept, conform to the 74th act of Parliament, 1587; and albeit the lands lay in non-entry ay and while sasine were taken. *See* RELIEF CASUALTY OF.

Fol. Dic. v. 2. *p.* 62. *Durie, p.* 359.

*** Spottiswood reports this case:

ALL Sheriffs, &c. are charged in their accounts to the Exchequer, according to the book of *responde*; and therefore if one take out a precept of sasine out of the chancery, albeit he never take sasine thereupon, yet the Sheriff will be charged for the duties of the land, because of the *responde*, and he will have his relief of the party obtainer of the precept, not only by poinding of the ground, but will also have personal action against him for the same.

Spottiswood, (FISCUS.) *p.* 132.

No 3. 1635. *November* 14. DICKSON *against* A DONATAR.

THE casualty of marriage is *a debitum fundi.*

Fol. Dic. v. 2. *p.* 62. *Durie.*

*** This case is No 4. p. 2169., *voce* CHARGE TO ENTER HEIR.

1664, *July* 13. GRAHAM of Hiltoun *against* The HERITORS of CLACKMANNAN.

No 4.
Land-tax not *debitum fundi*, and therefore not good against singular successors.

GRAHAM of Hiltoun having obtained a decreet against the Heritors of Clackmannan, for a sum of money imposed upon that shire, by the committee of estates; the Heritors of the shire have raised a review, and alleged, that this decreet being obtained before the commissioners, in the English time, he has liberty to quarrel the justice thereof, within a year, conform to act of Parliament; and now alleges that the said commissioners did unjustly repel the defence proponed for singular successors within the said shire, that they ought not to be liable for any part of the said imposition, having acquired their rights long after the same, and before any diligence was used upon the said act of the committee. It was *answered*, that there was no injustice there, because this being a public burden imposed upon a shire by authority of Parliament, it is *debitum fundi*, and effecteth singular sussessors, especially seeing the act of the committee of estates was ratified in the Parliament 1641; which parliament and committee, though they be now rescinded, yet it is with express reservation of

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.

No 5.
Singular successors are not liable for reparations bestowed on the minister's manse before they were heritors.

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, absolvitor; *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 *ædificium 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 allegeance, 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-