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CRAIGDALLIE, &c. v. AIKMAN, &c.

"other; and that the society of such persons acceded to a "body termed in the pleadings, 'the Associate Synod.'"

2d, The appellants are no longer in communion with this body, but have thrown off their submission to, and connection with it, and have thus lost all title to derive benefit from the trust question.

3d, The respondents, on the contrary, have all along been, and still continue, in communion with the Associate Synod.

4th, The Associate Synod has not openly renounced or directly deviated from any of the original principles of the Secession; but, on the contrary, the proposed alteration of the formula, which is the only ground for inferring a change of religious persuasion, against this body, was expressly rejected. Although the preamble was adopted, this prefatory explanation was perfectly consistent with the strictest principles of the Burgher Association, and was proposed and supported by the appellants themselves, who, consequently, are debarred from converting the adoption of this explanation, as a ground of preference to them over the respondents.

After hearing counsel,

It was ordered and adjudged that the interlocutor be, and the same is hereby affirmed.

For the Appellants, *Ar. Colquhoun, Tho. Thomson, Fra. Horner.*

For the Respondents, *Alex. Maconochie, H. Cockburn.*

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GOVERNORS OF HERIOT'S HOSPITAL. v. ROSS.

[Ross' Land Rights, vol. ii., p. 193.]

GOVERNORS OF GEORGE HERIOT'S HOSPITAL, ... *Appellants;*

JOHN COCKBURN ROSS, Esq., . . . *Respondent.*

House of Lords, 24th July 1820.

SUPERIOR AND VASSAL—SUB-FEUS—COMPOSITION ON ENTRY.

This was an action raised by the respondent, who had purchased, many years ago, the ground now covered by Shandwick Place and Queensferry Street. Originally he had obtained charter from the appellants, his superiors, on paying a composition of £32, being the sum corresponding to the real rent of the ground and houses erected thereon.

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Since then, he had feued out the whole ground for building, gaining thereby a yearly return in sub-feu duties, of the sum of £428, 11s. 8d., from the sub-feuars, besides taking them bound to pay a *duplicando* of the feu-duty on the entry of every heir and singular successor.

Intending to alienate his whole original feu, the respondent demanded of the appellants to give entry to his disponee, a singular successor, on payment of £430, being one year's sub-feu duty. This the hospital declined, unless he would pay one year's sub-feu duty, and also one year's average value of the whole profits derived by the respondent from his sub-feus, by casualties, or any way whatever.

Action having been raised by the respondent against the Governors of the Hospital, in defence the appellants stated that, in point of fact, the sub-feu rights, said to have been granted, were executed without their consent or concurrence. That in this situation their rights as superiors could not be affected by these sub-feus, but must continue entire, as if such sub-feus had never been granted; that the respondent, therefore, must continue liable in the legal full casualty due to the appellants, his superiors, which, upon the entry of a singular successor, is by law fixed at a full year's rent of the lands, according to the value of the same, at the time the entry is granted, and without distinguishing whether such rent proceeds from agricultural produce, or from buildings.

The Lord Ordinary (Meadowbank) pronounced this interlocutor: "Finds, that by the pursuer's titles from the Nov. 12, 1813.
"defenders, he was under no restraints from sub-feuing,
"and that the sub-feus he granted, it is not controverted
"by the defenders, were made for a full and adequate avail
"of the subject, computing feu-duties and casualties only,
"and created an immense improvement in the produce
"thereof, advantageous for the superior he held of, as well
"as for himself; finds that a purchaser, or adjudger, from
"the pursuer will be entitled to obtain an entry from the
"defenders on paying the free income of the estate ac-
"quired by him during the first year of his access to the
"possession thereof; and that the defenders have no title
"to exact from him any composition according to actual
"or hypothetical rents, payable to, or enjoyed by, the sub-
"feuars, and decerns and declares accordingly; finds the
"pursuer is entitled to the expense of extract, but no other

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GOVERNORS OF HERIOT'S HOSPITAL *v.* ROSS. June 6, 1815.

"expenses hitherto incurred, and dispenses with any repre-"sentation." *

On two several reclaiming petitions to the Inner House, the Court adhered.†

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

The LORD CHANCELLOR (ELDON) said,

"My Lords,‡

"Before your Lordships proceed in the further discussion of the case of the Duke of Hamilton and Mrs Scott Waring, I will take the liberty of calling your attention, in a single word, to the case of the Lord Provost, Magistrates, Ministers, and Council of the city of Edinburgh, Governors of Heriot's Hospital, and John Cockburn Ross. My Lords, this is a case of great importance, and of no small difficulty. Since it was heard before your Lord-

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* Note by the Lord Ordinary:—

"The Lord Ordinary conceives it quite desperate of the defenders to think they are to get the better, in a question as to the rights of superiority, of the authority of Stair, Bankton, and Erskine, without an adverse authority of any description; even Craig being also hostile. It was slowly, and with difficulty, he apprehends, that in feu holdings a *duplicando* was exigible from heirs, without a stipulation for that purpose in the contract, or charter, because it was the feeling of the country, as Stair gives it, that feus were locations affording a superior security for the profits of the lands to personal or temporary leases, and were not proper fees, admitting of such severe casualties. But this came to be established, though, as appears from Elchies' Dictionary, with decisions adverse to it. In fact, the feudal law gave no authority for it. The entry, then, of a singular successor could only be thus taxed by virtue of the statutes authorising comprisers, &c., to compel an entry, as stated in the memorial for the pursuers; and of course it is not a feudal casualty, but a statutory payment for completing an alienation, and must be interpreted accordingly. In a proper feudal casualty, the superior is not affected by what he has not consented to; but, can it be believed or argued, that, in order to obtain an entry to an estate of £400 per annum, the statute meant to authorise a payment of £4000, to be exacted by a superior; or, can it be believed, that ever the country has so understood the statutes, and submitted to it without even a question."

† For opinion of judges, *vide* Fac. Coll., vol. xviii., p. 402.

‡ From Mr Gurney's short-hand Notes.

ships, I have very frequently given the most laborious attention to it, and the result of that attention, repeatedly given, is that I cannot find reason for offering to your Lordships, as my opinion, that you should disturb the judgment. It is, undoubtedly, a case of very great importance, and a case of great difficulty; but, upon the best judgment I can give, I think the majority of the judges have decided rightly. I shall, therefore, trouble your Lordships by moving to reverse the judgment, putting that question according to the usage of the House, meaning, at the sametime, to vote for the affirming it."

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GOVERNORS OF HERIOT'S HOSPITAL *v.* ROSS.

It was accordingly ordered and adjudged, that the interlocutors complained of in the said appeal be, and the same are, hereby affirmed.

For the Appellants, *John Leach, J. H. Mackenzie.*

For the Respondent, *Sir Saml. Romilly, H. Cockburn.*

JOHN GEDDES, of the Verreville Glassworks, and formerly Manager of the Glasgow Glasswork Company, ... } *Appellant;*

ARCHD. WALLACE, for himself and the other Partners of the Glasgow Glasswork Company, ... } *Respondents.*

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GEDDES *v.* WALLACE, &C.

House of Lords, 24th July 1820.

PARTNERSHIP—LIABILITY OF PARTNER.

The appellant was formerly manager of the manufactory of glass, called the Glasgow Glasswork Company, and, besides his salary, he was allowed, as a part of his remuneration, a share of the profits of the business, without being required to advance any capital. At the distance of many years, after the appellant had quitted that situation, a claim was brought against him for payment of a share of loss, said to have been sustained by the proprietors of the Glasswork, in winding up the undertaking, after the sale of the establishment.

The appellant, conceiving that he had been merely received as a partner, in subserviency to his character of manager, and that having brought no capital into the stock of the company, and being liable to be dismissed at pleasure by the company, that he was not liable for the alleged ultimate loss of the capital. The Court of Session held him liable for his share