

No 41.

the vassal was not *in mora*, or vassals would have been in a miserable case, who could not get infeftment when they applied for it.

THE LORDS, 20th June 1745, "found, that whereas the petitioner did not claim the superiority as heir to his predecessor, but as a singular successor; therefore adhered to the Lord Ordinary's interlocutor."

*Pleaded* further in another bill; That casualties of superiority, before they are divided from it by declarator, go along therewith; and therefore the Captain having, whether as heir or singular successor, acquired right to the superiority, has right to the casualties thereof incurred and never separated; Dirleton, word, CASUALTIES OF SUPERIORITY, Stewart's Answers, and a decision 11th July 1673, Robert Faa against Lord Balmerino and Powrie, No 20. p. 5449, *voce* HERITABLE and MOVEABLE. See No 25. p. 9307.

*Observed* on the Bench, That the former interlocutor adhering to the Lord Ordinary's, went on the specialties of the case in the uncertainty of the superior, not solely on the pursuer's being a singular successor.

"THE LORDS adhered."

Act. *A. Macdoyal, W. Grant et Lockhart.* Alt. *Alex. Boswell.* Clerk, *Forbes.*  
*Fol. Dic. v. 4. p. 19. D. Falconer, v. 1. p. 111.*

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S E C T. V.

Conjunct fee excludes non-entry.—Non-entry excluded where the lands have been full thirty six-years.

1511. December 11. The KING against The LAIRD of GRANTULLIE.

No 42.

GIF ony over-lord call and persew his tenent to heir and se his landis pertening to him decernit to have bene in non-entres be the space of divers and sindrie zeiris, viz. be the space of fiftie or sixtie zeiris, or fra thyne furth, and the partie defendar produce ony saisine or saisines, beirand him and his predecessouris, or himself allanerlie, to have bene lauchfullie saisit in the saidis landis be the space of fiftie zeiris immediatlie preceding the day and dait of the sum-moundis intentit againis him, he aucht and sould be simpliciter assolzeit fra the clame and petition proposit and persewit againis him tuiching the non-entres of the saidis landis, not onlie of the said space of fiftie zeiris, during the quhilk thay wer full, bot also of all uther zeiris and termis precedand the samin.

*Balfour, (NON-ENTRY OF HEIRS.) No 23. p. 262.*