

No. 19.  
nor liqui-  
dated.

the superior, ought not to be stayed, upon the not payment of the duties of the lands during the terms that they were in non-entry by the retour, seeing the duties of the lands were craved by the said non-entry, being the three terms subsequent to the ward, (the landholding ward) and the same were not liquidated; for if the superior had been in possession of the lands, by virtue of the ward, he might have continued that same possession during the non-entry; but he not being in possession, he had his action therefore, and in the mean time the vassal ought to be received, but prejudice of his right *prout de jure*; and sick-like the Lords found the reason not relevant to stay the non-entry, bearing, That the lands pertained to him by recognition, by the alienation of the same made by her father, seeing the recognition was not declared; but the Lords found, that the decreet finding the charges orderly proceeded, ought to bear a reservation of whatsoever was the superior's right, which he had, *prout de jure*, wherein he should not be prejudged by this his necessary obedience in entering of the vassal.

Clerk, *Gibson*.

*Fol. Dic. v. 4. p. 407. Durie, p. 485.*

\* \* \* See Earl of Wigton against Yester, *supra*.

1634. February 15. LAIRD of MONKTOUN *against* LORD YESTER.

No. 20.  
Where the representative of a vassal, who had subfeued, charged the superior to infest him, he was found obliged to do so, upon receipt of the duty due by the subvassal, and not the whole rent of the lands.

The lands of ——— being disponed by the Lord Yester to umquhile Hay of Monkton, to be holden of him, who thereafter setting them in feu to a subvassal, to be holden of Monkton, for payment of a feu-duty, who is infest, and thereafter in possession, by virtue of his feu; thereafter Monkton disposes his right of these lands to another, from whom the same are appraised, or for his debt adjudged against the apparent heir, being charged to enter heir, and renouncing; the creditor, to whom the same is adjudged, and his assignee, charging the Lord Yester to enter him in Monkton's place, who was his immediate vassal, and who had disponed his right, which was adjudged, as said is, which the superior was content to do, he getting a year's duty of the land; and the charger alleging, that he could give no more for his entry but one year's feu-duty, which was payable by the subvassal to the Lord Yester's immediate vassal, seeing by his adjudication he would get no more in time to come but only that feu-duty, and he ought to give no more than he would obtain himself; this allegiance was found relevant, and the Lords ordained the superior to enter this party in place of his vassal, he paying the feu-duty, which he would obtain from the subvassal, and found, he ought to pay no more for his entry; neither was it respected, what the superior alleged, that he was not in law holden to know that sub-feu, set by his vassal, being done without his consent, and so to his prejudice, especially whereas this charger had obtained

also the sub-vassal's life-rent, he being at the horn year and day, whereby he bruik- ed the whole profit of the land, or might bruik it, and so had no prejudice to pay a year's profit of the land to the superior; which allegiance was repelled, seeing the casuality of the sub-vassal's life-rent could fall to none but the sub-vassal's immediate superior, and not to his superior's superior; likeas the principal vassal set the feu to the sub-vassal, at that time when he might do it by the laws of the realm, and at which time the superior's consent was not in law requisite thereto.

Act. *Stuart.* Alt. *Nicolson.* Clerk, *Hay.*

*Fol. Dic. v. 2. p. 407: Durie, p. 705.*

No. 20.

1698. *January.* PRINGLE of Greenknow against The EARL of HOME.

Pringle charges the Earl to receive and enter him in some lands. The Earl suspends, that they must pay the by-gone non-entry and feu-duties, conform to the clause, *faciendo quod de jure facere tenetur.* Answered, I have a discharge from your father, and an obligation to enter me gratis. Replied, That discharge cannot operate against me, unless you prove I represent the granter. Duplied, You are the *hæres linealis* and nearest to him in blood, and it must be presumed you represent, unless you instruct you have right to the superiority by a singular title, and then you may plead, the discharge cannot operate against a singular successor. The question was, If the Earl must produce his title, that will exclude the discharge produced, or if Greenknow must prove he represents that person who gave the said discharge? The Lords found the Earl obliged to show his right to the superiority, by which it would appear if the discharge would subsist or not; and if he was not infest, then the vassal, on his decret of his tinsel of the superiority, would go to the next superior, the King, and obtain himself infest by the Chancery.

*Fountainhall, v. 1. p. 815.*

No. 21.

Effect of a discharge from the superior's predecessor.

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SECT. VI.

Whether a Superior is bound to grant a Precept of CLARE, or infest Vassals by Hasp and Staple?

1668. *July 15..* A BURGESS of STIRLING, Supplicant.

There being a bill given in by a Burgess of Stirling, who was served general heir to his father, for infesting him in a tenement of land, wherein his father died infest,

No. 22.