

lands of me, takes an infeftment holding of another superior than me, it is a tacit sort of disclamation.

No 3.

One will not be heard to disclaim his superior at any time he pleaseth, for if it redound to his superior's disadvantage, he may not do it against his will. This was found betwixt John Stuart of Coldingham and the Laird of Wedderburn, whose liferent of some lands holding of John had fallen through his rebellion attour year and day. In which case, Wedderburn offered to disclaim, but was not suffered.

*Spottiswood, (DISCLAMATION.) p. 81.*

1681. *January 18.* EARL OF QUEENSBERRY *against* IRVINE.

THE EARL of Queensberry having obtained decret both of general and special declarator of non-entry against Irving of Cove, he suspended and raised reduction, in which the decret being turned into a libel; the defender *alleged*, That he could be liable in no non-entry to the pursuer, because he and his predecessors held of the Lord Carlile, and were never vassals taking their holding of my Lord Queensberry, and therefore cannot be decerned for non-entry to him, till he produce a progress of rights from the Lord Carlile, *2do*, Though his progress were produced, the defender cannot be liable for the full duties since the citation of the general declarator, because that is only due for contumacy in wilful lying out, and therefore can have no effect till the pursuer's right to the superiority be produced and known. The pursuer *answered*, That he produced his sasine *ab initio*, which is more than sufficient for superiors, and if the defender will disclaim, he may do it upon his peril of disclamation. It was *replied*, That there can be no hazard of disclamation, unless the defender or his predecessors had acknowledged that he had received charters from him or his predecessors.

THE LORDS found that he was obliged to produce a progress of rights to the superiority, and reserved to themselves, after production, to determine, when the special declarator to the mails and duties should begin.

*Fol, Dic. v. 1. p. 245. Stair, v. 2. p. 835.*

*See APPENDIX.*

No 4.

There can be no hazard of disclamation, where the superior is a singular successor, not formerly acknowledged by the vassal.