

No. 3. his lands feu of the Bishop for payment only of a certain feu-duty *pro omni alio onere*, &c. and was not astricted by his infeftment to give suit at any of the Bishop's head-courts. Replied: *Hoc inest* in his infeftment, that he is obliged to give suit and presence at the said head-courts, if it be not expressly discharged in his infeftment, although there be no mention of it. Duplied: There is no holding of its own nature subject to give suit and presence at courts, except only ward lands, unless it be contained in the infeftment *per expressum*. The Lords found the exception relevant.

*Fol. Dic. v. 2. p. 406. Spottiswood, p. 76.*

\* \* \* Durie reports this case :

The Bishop of Aberdeen's Bailie having unlauded some of the vassals of the Bishoprick, for not compearing to answer in the Bishop's head-courts, and some of the vassals suspending the charges executed for payment of these unlauds, upon this reason, that they were infeft in the lands in feu *cum curiis*, and for payment of a feu-duty *nomine feudifirmæ*, and thereby were not subject to answer at his head-courts; the Lords found, that feuers, who were infeft for payment of a feu-duty *nomine feudifirmæ* for their lands *pro omni alio onere*, were not subject to compear in their over-lords head-courts, they not being cited nor warned thereto, and so for their not compearance that they could not be unlauded. For the Lords found, that vassals holding their lands by ward holding, by the nature of that holding, are holden, and obliged *hac ipsa* to appear in their superior's head-courts, without any warning or citation, whereas the vassals by feu or blench-holding, by the nature of that kind of holding, (except it be otherwise provided by the tenor of their infeftments) are not obliged to compear at the superior's head-courts, nor at no other courts, except upon particular citation lawfully made to them, in cases where they ought to compear to answer there; in which cases, being so cited, their infeftments do not always exsem them from their over-lords' jurisdiction.

Clerk, *Gibson*.

*Durie, p. 506.*

1699. December 19.

No. 4.

The Lords found vassals holding blench or feu not liable to give suit or presence at the superior's head-courts.

DALLAS, Younger of St. Martin's, *against* The EARL of CALLANDER.

The Earl, as Sheriff of Stirlingshire, having fined St. Martin's for absence from the head-courts; he suspends, and raises a declarator of exemption, that blench-holders and feuers are not obliged to attend in suit or presence, their *reddendo* being *pro omni alio onere*, and that it has been so decided, 12th of March, 1730, Bishop of Aberdeen's Bailie against his Vassals, *supra*, and Hope's Larger Practiques, Tit. Of the Sheriff. Alleged by his Majesty's advocate, No process till the Officers of State be called for the King's interest, the Sheriff being his lieutenant there. Answered, This being an heritable Sheriffship, the King has neither interest in the fines, nor jurisdiction, and if it should afterwards devolve in his hands, this declarator will be *res inter alios acta quoad* him, and at worst to cite *cum processu* was never refused. The Lords found no necessity of calling the

Officers of State in this case, but prejudice to his Majesty's advocate to appear if he think fit. I remember, in the Parl. 1672, there was an overture brought in, that all the freeholders and vassals, whatever their holding was, might be obliged to attend the Michaelmas head-court; but by a vote it carried in the negative; only the Sheriff had the interest that it was omitted to be marked in the list of the unprinted acts. See this also determined by the 2d Cap. 2d St. Rob. I.

The Lords, on the 17th January, 1700, found him, as a blench or feu-holder, not liable to suit and presence, but exeemed.

*Fol. Dic. v. 2. p. 406. Fountainhall, v. 2. p. 74.*

No. 4.

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## SECT. II.

Privilege of brewing without the Superior's Licence.

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1681. *December 24.* SIR PATRICK NISBET *against* ROBERTSON.

In the action of declarator, pursued by Sir Patrick Nisbet, as Baron of the Barony of Dean, against Robertson, one of his feuers, wherein he craved, That the said Robertson, might not have liberty to brew, not being infeft *cum brueriis*, without license of Sir Patrick Nisbet, who was superior and baron of the barony, whereof the said feu was a part; the Lords found, That the feu, being infeft in his feu by his superior, might brew, or use any other manufactory, without the superior's licence; and that these words, *cum brueriis*, were only exegetic; and that the nature of the feu did imply the same, though not expressed: And therefore assolizied the defender.

No. 5.

*Fol. Dic. v. 2. p. 406. P. Falconer, No. 14. p. 6.*

Sir P. Home reports this case:

Sir Patrick Nisbet, as infeft in the Barony of Dean, having pursued Thomas Robertson, and other brewers, to desist from brewing and topping of ale within his barony; alleged for the defenders, That there is no law for prohibiting tenants or vassals from brewing or topping of ale within a barony; and if there were any such law to give a Baron that power, it is now in desuetude; and if it were in the Baron's power to hinder the brewing of ale within his bounds, it would give a great occasion of oppression, for then the Baron would hinder any to brew within his bounds, unless they paid what price for his bear he pleased; and it would be prejudicial to the King as to the excise, and to the whole lieges, who would be necessitated to buy the drink at a dearer rate, and such a prohibition is against the current of the laws and acts of Parliament which appoint the setting up of ale-