

No. 28. lid and effectual to the pursuer, and his foresaids, in all time coming, as if the said defender, or one or other of them, had been entered and infeft in the superiority of the foresaid lands, and thereafter the pursuer had been entered and infeft in the property thereof, as vassal to the said defenders or either of them; and decern and declare accordingly."

Lord Ordinary, *Balmuto.*  
For the Vassal, *Dickson.*

For the Superior, *Glassford.*  
Agent, *A. Gibson, W. S.*

Agent, *R. Hill, W. S.*  
Clerk, *Menzies.*

F.

*Fac. Coll. No. 51. p. 104.*

### SECT. VIII.

A Superior may compel his Vassal to enter, but not entitled to Infeft him without his consent.

No. 29. 1581. *January.* EARL OF EGLINTON *against* LAIRD OF CALDWALL.

The Earl of Eglinton pursued the Laird of Caldwell, who had a piece of ground holden in ward and relief of the said Earl, whereof also the ward was disposed to the said Laird by the said Earl to enter to the said land, the ward being run forth, to the effect the said Earl may be served of a tenant into the said lands, and receive all other duties and services belonging to the same. It was answered to the summons for the part of Caldwell, that in nowise he could be compelled to enter to him tenant of the said lands, because the said Earl had disposed the same ward to him; nor yet pay any mails or duties of the same, because the same, by reason of the disposition, appertained to him. To this was answered, that the disposition of the ward was but unto such time as the heir was of perfect age to enter, and now the heir being of perfect age to enter, he could not lie furth to the prejudice of the over-lord and superior. The which allegiance was found relevant by the Lords, and pronounced him to enter, and found that the vassal might be compelled to enter, as the superior might be compelled to receive the tenant or vassal.

*Fol. Dic. v. 2. p. 408. Colwill MS. p. 319.*

No. 30. 1582. *March.* LAING *against* SCRYMGEOUR.

Mr. John Laing, being provided to the pensionary of Brechin, pursued one Scrymgeour, as nearest and apparent heir to another called Scrymgeour, to enter to certain lands, alleging the same to appertain to him in feu-farm holden of the

said pensioner, and that to the effect the said pensioner might be certified of him who was to be his vassal, and who should pay to him the mails and duties of the lands holden of him. To which it was answered by the defender, that the pursuer could have no direct action to pursue him to enter against his will, but if the vassal lay forth and entered not, he had other ordinary remedy, the non-entry of the lands, or the reduction of the titles, for not payment, et ubi quis habet ordinarium remedium non opus est extraordinario; and so the lying forth of the vassal could not prejudice the superior in any sort, but would rather be locupletior thereby. The Lords nevertheless found, by interlocutor, that the superior had good action to pursue the vassal to enter, and that conform to a practick past of before, betwixt the Earl of Eglinton and the Laird of Caldwell, (*supra.*)

*Fol. Dic. v. 2. p. 408. Colvill MS. p. 358.*

No. 30.

1671. December 8.

BLACK against ELLEIS.

Mr. Robert Black being donatar by the Duke of Hamilton, pursues non-entry of certain of his vassals; who alleged absolvitor, because the land was full by infeftments taken from the usurpers, partly by the heirs of the vassals, and partly by apprisers, who must maintain the obtainers in their rights, in respect of the act of Parliament 1661, ratifying such infeftments, and that these infeftments were necessarily taken when the family of Hamilton was forefault, and they cannot be compelled to renew the same during their life, seeing the act bears expressly, that the ratification is made for the ease of the lieges. It was answered, that the fore-said act could only relate to lands holden of the King immediately; *2do*, The said forefaulture being most unjust, and rescinded, all infeftments founded thereupon fell in consequence; and though these infeftments might be a colourable title before citation, yet now the vassals ought to renew their infeftments, and the apprisers pay the composition, getting allowance of what they paid to the usurpers.

The Lords found that the vassals could not be compelled to take new infeftments, being either such as were heirs entered by the usurpers, or apprisers infeft, but did forbear to give out their interlocutor, till endeavours were used with the defenders, to see what they would do of consent.

*Stair, v. 2. p. 20.*

No. 31.

Effect of the superior's forfeiture.

1794. November 12. DAVID STEWART, against JAMES BURNSIDE.

Sir John Maxwell's commissioners granted a feu-disposition to James Burnside, his heirs and assignees, which was made out by David Stewart, writer to the Signet, Sir John's man of business, who also took infeftment on the precept, and extended the sasine, without having received any orders from Burnside to that purpose.

No. 32.

A superior is not entitled to infeft the vassal in a feu-right, without his consent, nor to insist