

S E C T. XVI.

Citation in Declarator of Non-entry.

1610. June 9.

WEDDERBURN *against* HOPPER.

No 68.

In a declarator of non-entry, the Lords found, that the superior needed call none but his own immediate vassal, and having obtained decreet against him; that he might thereafter get his sub-vassal removed, although he had received the feu-duty from him, and had not called him in the declarator of non-entry.

THE LAIRD of Wedderburn having obtained a decreet of non-entries of certain lands, against Andrew Nisbet his alleged vassal's apparent heir of the same, he preferred an action of removing from the saids lands against him, who *alleged*, that he should be assoilzied, because he was heritably seised therein, and in possession these 20 years; and being urged to condescend whom-by he was infest, and whom-of holden, he declared he was infest by Nisbet, who was infest by Richard Creiff, who was infest by the King, upon the annexation, long before the Laird of Wedderburn's infestment. Wedderburn *answered*, That he was infest upon Richard Creiff's resignation holden off the King, and so Nisbet was his vassal, by whose decease the lands falling in non-entry, and so declared in his Court, he had undoubted right to obtain possession of the saids lands, and bruik them ay and while the entry of his vassal's nearest heir; and could not be debarred therefrom by any subvassal's infestment, not holden nor confirmed by him. Hopper *answered*, That he being infest by him who had power, and by virtue thereof in so long possession, he could not be removed; and that the decreet of non-entries could not hurt him, seeing he was not called to it, and could not be misknown by the pursuer, because the Laird of Wedderburn had pursued him and gotten decreet against him for payment making to the said Laird of his feu mails and duties, conform to the which decreet he had made payment to the said Laird, at least to his officer in his name, having his power. It was *answered*, That if any pursuit was warranted by Wedderburn, it was *propter debitum fundi* which might be exacted of the possession of the lands; likeas this defender was bound by his infestment to pay the feu-duty to the pursuer for relief of his master as his superior's debt. In respect whereof the LORDS repelled the allegiance, and found that Wedderburn had sufficient action.

Fol. Dic. v. 1. p. 137. Haddington, MS. No 1891.

1683. February 16.

MARQUIS OF QUEENSBERRY *against* E. of ANNANDALE.

No 69.

In a declarator of non-entry, against

IN a declarator of non-entry, at the instance of the Marquis of Queensberry, as Lord of Torthorral, against the Earl of Annandale, as heritor of the lands of ———,