

proceeded, because he was *in pessima fide* to denude himself after the charge.
Fol. Dic. v. I. p. 471. Spottiswood, (SUPERIORS.) p. 322.

No 16.

1581. *May.*ORME *against* ORME.

THERE was a gentlewoman called Orme, spouse to one Adamson in Perth, and daughter to the Laird of M. ; who being retoured and served heir to her brother, the young Laird of M. in certain lands that he held of his father, as immediate superior to him of the same, charged her father to give her state and sasine according to her service, as nearest heir to her brother, who refused the same. She meaned herself to the Lords of Session upon her father's refusal ; obtained letters and charges to charge the Abbot of L. as immediate superior of the said lands to her father, and of whom he held the said lands *in capite*, to give her state and sasine of the same. The Abbot meaned him to the Lords of Session, and obtained suspension, *alleging* that her brother held no lands of him as immediate superior of the same ; and also that the order was not good, in directing charges against him by the Lords of Session ; but that the common order ought to have been observed, which is, that when any superior refuses to enter another, the complainer has recourse to the nearest immediate superior, and that by the order of the Chancery, and precepts direct furth of the same. The whilk allegiance the LORDS found relevant, and ordained the said woman to have direct recourse to the Chancery, and raise precepts there conform to the common order.

Fol. Dic. v. I. p. 470. Colvil, MS. p. 301.

1624. *July 27.*L. CAPRINGTON *against* L. KEIR.

L. CAPRINGTON pursues the L. of Keir to receive him as heir retoured to his father, in some lands holden of the L. of Foulshiells, which Foulshiells held the same of the L. of Keir ; and because Foulshiells, who was Caprington's immediate superior, being charged by Caprington to enter to the superiority within 40 days, conform to the 57th act, Parliament 7th, James III. with certification ; therefore he hath recourse, and pursues Keir, Foulshiells's superior, to enter him. This pursuit was sustained against Keir summarily, albeit it was alleged for Keir, that Caprington could be in no better case than Foulshiells would have been, who, if he had been desiring to be received as vassal, and heir to his predecessor by the defender, he could not do the same by this summar pursuit, but ought to have his recourse to seek precepts out of the Chancery to that effect, conform to the order in such cases, and so Caprington ought to do the like ; which allegiance was repelled, and this order sustained. Like-as the LORDS declared they would sustain the same, when the like question oc-

No 17.

Where an immediate superior refused to enter a vassal, the Lords found, that his superior could not be charged to enter the vassal, by virtue of their Lordships deliverance on a petition, but by precepts from the Chancery.

No 18.

If the immediate superior be not entered, he may be charged to enter heir within 40 days, with certification, that if he fail, he shall lose the superiority during his life ; and if he fail, the mediate superior may be pursued *via actionis* to supply his

No 18.
place, and receive the sub-vassal under the same certification, without necessity of charging him upon precepts out of Chancery.

curred. In this process also the LORDS found, That Keir ought not to receive Caprington, until all the retoured duty of the non-entry were paid to him, which Keir might claim by the non-entry of Foulsheills, his immediate vassal, since the decease of Foulsheills's father, last vassal and tenant of the lands, the time of whose decease he offered to prove; which the LORDS found ought to be performed to Keir by Caprington, in the same manner as Foulsheills behoved to perform the same, if he were desiring to be entered, seeing Caprington came in his place; and seeing he was forced to change his vassal, no reason was that he should be defrauded of that casualty, which was due to him from his immediate vassal; neither was it respected, that the pursuer alleged that the non-entry ought to be tried, and the time of the decease behoved to be proved; which not being done, he ought not to be prejudged in his entry, seeing also the act of Parliament foresaid, James III. appointed no such thing to be performed by the sub-vassal in these cases; and that it was against reason to urge him to any thing not contained in that act. Likeas the sub-vassals, who in these cases have recourse to the King, are not compelled to pay the non-entry of the King's immediate vassal, and other superiors ought not to be put in better case than the King; all which was repelled, and the non-entry duties ordained to be paid, before the superior were holden to receive the sub-vassal in place of his immediate vassal; but the LORDS ordained him to prove the time of his vassal's decease, through whose decease he craved the non-entry, at a term assigned to that effect, without further diets to be granted therefor, that the sub-vassal by these delays be not frustrated of his receipt and entry to the lands.

Act. Hope.

Alt. Nicolson younger.

Clerk, Scot.

THIS decision was followed, 16th July 1623, betwixt the Earl of Wigton and the Lord Yester; where the LORDS found, That the Lo. Yester was not obliged to enter the Earl of Wigton, in some lands wherein he was retoured, holden of the Lo. Yester, until the time he paid all the duties contained in his own retour, for the non-entry of the said lands; before payment whereof it was found the Lo. Yester was not holden in law to enter him, seeing the retour expressly bears, that he should do to the superior *omne quod de jure facere tenetur*. See SUPERIOR AND VASSAL.

Clerk, Gibson.

Fol. Dic. v. 1. p. 470. Durie, p. 142.

* * Haddington reports this case :

1624. July 27.—ANE sub-vassal served heir to his predecessor, having used the three precepts of the Chancery, to require his superior to receive him heir; and the same not being obeyed, he may, by way of action pursue his immediate superior, to hear and see it found and declared, that he has tint his superiority during his lifetime; and by the same summons may pursue his mediate

superior, to hear and see him decerned to enter him, in default of his immediate superio.

No 18.

1624. July 29.—CAPRINGTON, vassal to Shaw of Foulshells, having charged him to enter, and being entered, to infest him upon his retour; and upon his refusal, pursuing Shaw of Keir, who was Foulshells's superior, to enter him, his summons was sustained; but he was decerned to pay the non-entry of all the years that Foulshells was in non-entry, *tanquam debitum fundi*, reserving his relief.

Haddington, MS. v. 2. fol. 244.

1628. July 13.

DUNBAR Supplicant.

DUNBAR of Bandene being served and retoured in Galloway, as heir to his father in certain lands, raised precepts out of the Chancery, and required the Sheriff to give him sasine. Bandene means himself by a bill, and therewith produced before the Lords the instruments of the Sheriff's refusal, and desired the director of the Chancery might have a warrant to direct new precepts to a person specially designed to be Sheriff in that part, for giving to him sasine.—THE LORDS granted the bill.

No 19.

Fol. Dic. v. 1. p. 470. Auchinleck, MS. p. 212.

1629. July 16.

SCOT against DEANS.

A SASINE of a house in the town of Hawick, granted to the pursuer by the Bailie of the burgh, it being a burgh of barony, was sustained, the same sasine containing the pursuer's retour therein insert, extracted out of the Chancellery to be warrant thereto; albeit the defender alleged it to be null, not proceeding by virtue of precept out of the Chancellery, nor yet by the superior's precept of *clare constat*, without one of which, he alleged the naked retour could not be a warrant to the Bailies to give sasine in this burgh of barony, which he alleged hath not that privilege, as the King's burgh royal, whose Bailies give sasine usually by hesp and staple; and the giving of this sasine cannot be warranted by the retour, for that answers not to any point of the brieve; notwithstanding whereof the sasine was sustained; but here the superior concurred with the pursuer. See PROOF.

No 20.

An infestment within burgh of barony was sustained, upon no other warrant than a retour, without either a precept out of Chancery, or a precept of *clare constat* from the superior.

Clerk, Hay.

Fol. Dic. v. 1. p. 470. Durie, p. 463.