

1628. *March 8.*

WILLIAM DOUGLAS, Donatar to the liferent of JOHN STEWART, *against*  
WEDDERBURN.

No 3.

A vassal whose liferent, or other casualty, has fallen in the superior's hands, cannot disclaim him after the casualty has fallen.

A DONATAR to the liferent of a superior will fall the liferent of the said vassal, in case the vassal remain year and day at the horn, although the said vassal's liferent vake not at the time when the donatar took the gift of the superior's liferent.

1628. *March 26.*—IN the said action it was found, that the vassal whose liferent had fallen in the superior's hands, by his rebellion, attour year and day, or any other casualty belonging to the superior, might not disclaim his superior after the casualty had fallen. *See ESCHEAT.*

*Fol. Dic. v. I. p. 245. Auchinleck, (VASSAL.) MS. p. 252.*

\*\*\* Durie reports the same case :

IN the declarator of Wedderburn's liferent escheat, mentioned 8th March 1628, *voce ESCHEAT* ; the Laird Wedderburn being present, *alleged*, That he disclaimed John Stuart to be his superior of the lands libelled, and was content the superior should make what advantage he pleased of that disclamation, and therefore *alleged*; that his liferent could not fall to John Stuart, as to his superior of these lands. This allegiance was repelled, and the action for the liferent sustained, notwithstanding of the disclamation, because the defender being once vassal to the said John Stuart, at least being vassal to the King's Majesty by the act of annexation, and consequently to the said John Stuart since, by his erection, the Lords found, that after the casualty was fallen, and acquired to the superior, by the fault of the vassal, the said disclamation made thereafter, could not take away the preceding casualty which fell of before ; and it being in the superior's option, either to admit the disclamation, or to claim the casualties falling to him before, he could not be compelled to receive the samen, except he pleased so to do, seeing that was introduced as a benefit in favours of the superiors, which they needed not to admit but if they pleased so to do, after casualties were fallen.

*Durie, p. 372.*

\*\*\* The same case is also reported by Spottiswood :

THE pain of disclamation is the loss of the property of lands contraverted. By and attour the ordinary form of disclamation, when my vassal holding his

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.