

also the sub-vassal's life-rent, he being at the horn year and day, whereby he bruik- ed the whole profit of the land, or might bruik it, and so had no prejudice to pay a year's profit of the land to the superior; which allegiance was repelled, seeing the casualty of the sub-vassal's life-rent could fall to none but the sub-vassal's immediate superior, and not to his superior's superior; likeas the principal vassal set the feu to the sub-vassal, at that time when he might do it by the laws of the realm, and at which time the superior's consent was not in law requisite thereto.

No. 20.

Act. *Stuart.* Alt. *Nicolson.* Clerk, *Hay.*

Fol. Dic. v. 2. p. 407: Durie, p. 705.

1698. *January.* PRINGLE of Greenknow against The EARL of HOME.

Pringle charges the Earl to receive and enter him in some lands. The Earl suspends, that they must pay the by-gone non-entry and feu-duties, conform to the clause, *faciendo quod de jure facere tenetur.* Answered, I have a discharge from your father, and an obligation to enter me gratis. Replied, That discharge cannot operate against me, unless you prove I represent the granter. Duplied, You are the *hæres linealis* and nearest to him in blood, and it must be presumed you represent, unless you instruct you have right to the superiority by a singular title, and then you may plead, the discharge cannot operate against a singular successor. The question was, If the Earl must produce his title, that will exclude the discharge produced, or if Greenknow must prove he represents that person who gave the said discharge? The Lords found the Earl obliged to show his right to the superiority, by which it would appear if the discharge would subsist or not; and if he was not infeft, then the vassal, on his decret of his tinsel of the superiority, would go to the next superior, the King, and obtain himself infeft by the Chancery.

No. 21.

Effect of a discharge from the superior's predecessor.

Fountainhall, v. 1. p. 815.

SECT. VI.

Whether a Superior is bound to grant a Precept of CLARE, or infeft Vassals by Hasp and Staple?

1668. *July 15..* A BURGESS of STIRLING, Supplicant.

There being a bill given in by a Burgess of Stirling, who was served general heir to his father, for infefting him in a tenement of land, wherein his father died infeft,

No. 22.

- No. 22. and seised by hasp and staple ; this bill was refused ; for the Lords found no warrant for granting such letters that way, and infeftment being a custom and privilege within burgh, and answerable to an infeftment by a precept of *clare constat*, which no superior could be forced to grant, and there being an ordinary remedy by a special service, and thereupon to charge the Bailie to infeft.

Fol. Dic. v. 2. p. 407. Gosford MS. p. 12.

- No. 23. 1678. July 18. FULLARTON *against* DENHOLMS.

Entering an heir by a precept of *clare constat is mera voluntatis* of the superior, and what he is not bound to by law ; and upon his refusal the heir must obtain himself retoured, and thereupon get precepts out of the Chancery requiring the superior to infeft him.

Fol. Dic. v. 2. p. 407.

* * This case is No. 13. p. 9293. *voce* NON-ENTRY.

1738. December 13. GORDON, Petitioner.

No. 24.
Letters of
horning *de*
plano against
Magistrates
disobeying
a precept of
infeftment.

The Bailies of the burgh of Annan having refused to obey the precept for infefting an heir in a burgage tenement, which, upon his service, he had obtained ; upon his summary application to the Lords, warrant was granted for letters of horning, without any previous notice or intimation given to the Magistrates, the horning being considered as a charge against superiors, which the Magistrates might suspend if they saw cause.

Fol. Dic. v. 4. p. 312. Kilkerran, No. 1. p. 527.

SECT. VII.

Penalty on Superior for refusing to enter Vassals.—Superior possessing on Decree of Non-Entry.

- No. 25. 1629. December 15. YOUNG *against* BAILLIES of MONTROSE.

David Young being obliged to pay a sum, and in case of failing, to infeft his lands in an annual-rent therefore, out of his tenement in Montrose, and being