

SECT. IV.

Can a Superior interpose another betwixt himself and the Vassal, or divide Superiorities?

No. 9.

1610. November 6. STEWART *against* LORD ABBOTSHALL.

The King may not interpose a superior betwixt himself and those who become his vassals, by the act of annexation of kirk-lands to the Crown, affirmed by my Lord President to have been practised *in foro contradictorio* betwixt Colonel Stewart, having Pittenween erected, and the Laird of Abbotshall, after the year 1587 or 1592.

Fol. Dic. v. 2. p. 407. Haddington MS. No. 1998.

No. 10.

A superior cannot interpose any person betwixt himself and his immediate vassal.

1670. June 25. DOUGLAS, LAIRD OF KELHEAD *against* TORTHORELL, &c.

In a declarator of non-entry at Kelhead's instance, as being infeft in the barony of Kelhead, whereof the lands of ————— were a part, it was alleged, That the defender's predecessors were vassals to the Earl of Carlyle, and were never entered by the pursuer or his authors; neither could the pursuer have right to their superiority, because he himself was only infeft base to be holden of the Earl of Queensberry, who could not interpose a superior betwixt them and him, and could have only right to the by-gone non-entries, which they were not obliged to pay, until the Earl of Queensberry should grant them a precept for infefting them in the said lands to be holden of him as superior. The Lords did ordain the whole by-gone non-entries to be consigned in the Clerk's hands; until Kelhead should procure a charter and precept, subscribed by Queensberry, for receiving them as his vassals; which being done, they ordained all the preceding non-entries to be paid to the pursuer, not as superior, but as having right by assignation, which was equivalent as if he had been donatar; but they found, that his right being base, he could not be their superior.

1670. July 2.—In the foresaid declarator of non-entry, at Kelhead's instance against Torthorell, the pursuer insisted for the mails and duties of the lands from the date of the citation of the defender, as having been *in mora* from that time. It was alleged, That there being no general declarator of non-entry, and the citation being only upon a summons concluding both special and general declarator, there could be no decret of the mails and duties but from the date of the