

SECT. V.

Superior bound to enter the heir of his Vassal, but not till he has paid the by-gone Non-entry Duties.

1623. July 1.

LAIRD of COVINGTOUN *against* CAPTAIN of CRAWFURD and EARL of ANGUS.

No. 16. In retours, the Lords found, That the vassal craving entry must offer the hail by-gone non-entries preceding the charge, as well that which is found to have run before the retour as since the same.

Fol. Dic. v. 2. p. 407. Kerse MS. fol. 117.

* * Durie reports this case :

The Captain of Crawford, and the Earl of Angus having his right, charging the Laird of Covingtoun to receive and enter the Captain in some lands wherein he was retoured, to be holden of him by blench-holding, the Laird of Covingtoun suspended, upon this reason, that he ought not to receive him, while he did to him, as the retour bore, *id quod de jure facere tenetur*; and therefore that he ought to pay to him the retoured duty of all years that the lands are retoured to be in non-entry; which the Lords found relevant, and therefore ordained the charger to pay the suspender, before he should be holden to subscribe a precept for his entry, the retoured mail, conform to the new extent, of all the terms of the non-entry, to the present time of the discussing of the suspension; albeit the charger alleged, that he should pay only to the time of the first charge and precept, direct out of the Chancery, seeing the superior being *in mora* by his refusal, after the first charge he should not seek payment, but to the time of that charge; and if he had right to any term's duty since that charge, he ought to pursue or poind for the same, as accords of the law; but he ought not to delay to give him a precept, upon the pretext of the not present payment thereof, the same proceeding upon his own default; which was repelled by the Lords, and all the by-gones owing to this time of the discussing of the suspension were ordained to be paid presently, ere the precept should be subscribed and delivered to the charger.

Act. *Nicolson et Hope.*

Alt. *Aiton.*

Clerk, *Hay.*

Durie, p. 68.

* * Haddington's report of this case is No. 13. p. 6417. *voce* IMPLIED DISCHARGE AND RENUNCIATION.