

1624. July 29. LORD CAPRINGTON *against* LORD KEIR.

No. 17.

The Lords found, That the immediate superior was not bound to receive the vassal till all the non-entry duties of his immediate vassal were paid.

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

* * This case is No. 18. p. 6897. *voce* INFECTMENT.

1628. July 16. LORD WIGTON *against* LORD YESTER.

No. 18.

“ Quæstio est, utrum in his feudis quæ alio domino, quam de Rege tenentur, dominus feudi vassallo renovare investituram teneatur, antequam censum ei omnium annorum quibus feudum vacaverat, plene exsolverit, cum præceptum Regis hanc habeat conditionem “ *faciendo vobis quod de jure facere debet*” quæ licet plene astringant vassallum, ut domino satisfaciatur, antequam beneficium ab eo accipiat, tamen censuit senatus, cum in dominorum sit potestate feudum pro censu cum velit distringere, ne hoc quidem in mora esse debere, cur investituram differant; Craig, L. 2. D. 14.

Against this opinion it was decided in this case, where it was found, That my Lord Yester was not obliged to infeft the Earl before he paid him the retoured duties of the lands during all the years they were in non-entry; for it was thought hard to compel the superior to infeft his vassal, and then to put him to an action for the by-gone duties, which are ordinarily of no great avail.

Fol. Dic. v. 2. p. 407. Spottiswood, p. 95.

* * Craig’s opinion may be reconciled with the Lords’ decision thus: for when the retour containeth a liquid silver-duty, all the by-gones thereof must be paid before the superior be obliged to infeft his vassal, as in the above decision; but where the duty is not constituted or liquidated, as in wardlands, it is not reason to hinder the superior to infeft the vassal, because he is not paid of the non-entry duties subsequent to the ward, but he must pursue for it by way of action, as was found betwixt Marion Peebles and my Lord Ross, (*infra.*) *Spottiswood. Ibidem.*

1630. January 23. PEEBLES *against* LORD ROSS.

No. 19.

In a suspension at the Lord Ross’s instance, of charges at Marion Peebles’ instance, upon a precept out of the Chancellery, upon her retour as heir to her father, to infeft her, the Lords found, that the said charges, and her infeftment by

Distinction where the duty is not constituted

No. 19.
nor liqui-
dated.

the superior, ought not to be stayed, upon the not payment of the duties of the lands during the terms that they were in non-entry by the retour, seeing the duties of the lands were craved by the said non-entry, being the three terms subsequent to the ward, (the landholding ward) and the same were not liquidated; for if the superior had been in possession of the lands, by virtue of the ward, he might have continued that same possession during the non-entry; but he not being in possession, he had his action therefore, and in the mean time the vassal ought to be received, but prejudice of his right *prout de jure*; and sick-like the Lords found the reason not relevant to stay the non-entry, bearing, That the lands pertained to him by recognition, by the alienation of the same made by her father, seeing the recognition was not declared; but the Lords found, that the decreet finding the charges orderly proceeded, ought to bear a reservation of whatsoever was the superior's right, which he had, *prout de jure*, wherein he should not be prejudged by this his necessary obedience in entering of the vassal.

Clerk, *Gibson*.

Fol. Dic. v. 4. p. 407. Durie, p. 485.

* * * See Earl of Wigton against Yester, *supra*.

1634. February 15. LAIRD of MONKTOUN *against* LORD YESTER.

No. 20.
Where the representative of a vassal, who had subfeued, charged the superior to infest him, he was found obliged to do so, upon receipt of the duty due by the subvassal, and not the whole rent of the lands.

The lands of ——— being disponed by the Lord Yester to umquhile Hay of Monkton, to be holden of him, who thereafter setting them in feu to a subvassal, to be holden of Monkton, for payment of a feu-duty, who is infest, and thereafter in possession, by virtue of his feu; thereafter Monkton disposes his right of these lands to another, from whom the same are appraised, or for his debt adjudged against the apparent heir, being charged to enter heir, and renouncing; the creditor, to whom the same is adjudged, and his assignee, charging the Lord Yester to enter him in Monkton's place, who was his immediate vassal, and who had disponed his right, which was adjudged, as said is, which the superior was content to do, he getting a year's duty of the land; and the charger alleging, that he could give no more for his entry but one year's feu-duty, which was payable by the subvassal to the Lord Yester's immediate vassal, seeing by his adjudication he would get no more in time to come but only that feu-duty, and he ought to give no more than he would obtain himself; this allegiance was found relevant, and the Lords ordained the superior to enter this party in place of his vassal, he paying the feu-duty, which he would obtain from the subvassal, and found, he ought to pay no more for his entry; neither was it respected, what the superior alleged, that he was not in law holden to know that sub-feu, set by his vassal, being done without his consent, and so to his prejudice, especially whereas this charger had obtained