

SECT. XVI.

Disclamation.

1683. *February.*MARQUIS of QUEENSBERRY *against* EARL of ANNANDALE.

No. 86.

In a declarator of non-entry, at the instance of the Marquis of Queensberry, as Lord of Torthorrel, against the Earl of Annandale, as heritor of the lands of _____, alleged for the defender, The said lands not being expressly contained in the pursuer's title-deeds, they can only be claimed as part and pertinent, and since the defender denies that they are part of the Lord Torthorrel's estate, and asserts that he and his predecessors stood vassals therein to the King for the space of 40 years, the pursuer ought *in initio* to make up his title, by proving that they are part and pertinent. Answered, The defender, if he controvert the pursuer's right of superiority, may disclaim it on his peril. The Lords found the pursuer needed not prove part and pertinent, but that the defender might disclaim on his hazard, the process not being designed to take away the defender's property, but only for claiming the casualties of superiority, where no superior was competing.

Fol. Dic. v. 2. p. 411. Harcarse.

* * * This case is No. 69. p. 2210. *voce* CITATION.

1688. *February.* EARL of MARSHALL *against* GORDON of Fechill.

No. 87.

In a declarator of non-entry, at the instance of the Earl of Marshall against Gordon of Fechill,

It was alleged for the defender: That he was only mediate vassal to the pursuer, and immediate vassal to my Lord Forbes, who was not called.

Answered: If the defender controvert the pursuer's right of superiority, he must disclaim.

The Lords found the defender obliged either to acknowledge the pursuer for his immediate superior, or to disclaim upon his hazard.

Fol. Dic. v. 2. p. 411. Harcarse, No. 737. p. 209.