

lake or *poirpors* in inclosure) is the Vassal's usurping or incroach-
 ing upon the Superior's known uncontested Property. *Gene De*
verb. signif. Verb. Purpresture) makes three Sorts of this Offence, *incro-*
chairs and proper Lands; or incloses the King's high Ways; or diverts
running Waters from their right course; or builds upon any Part of
the Callay or Street within a royal Burgh. The second is, when a Vas-
 sal usurps the Property of his Superior who is a Subject. The third
 is when one Subject or Neighbour incroacheth upon the Property of
 another Subject or Neighbour, or molests him in his Meiths or Manns
 (But this last being only a Controversy about Marches called *Moles-*
tation is improperly termed *Purpresture*. And the first incroachment
 against the King having no more Privilege in this case than any other Super-
 ior so that there is but one Kind of *Purpresture* viz. Where a Vassal of any Rank
 whether Ward Bench Feud or Burgage, doth not confine himself within his
 Bounds but arrogantly violates and breaks in upon those of his Superior being
 Feud Lib. 3. Tit. 5. §. 3. When a Superior's Property is burdened with a Right
 of common Pasturage acquired to the Vassal by Tenent or Description, the Vas-
 sal cannot till or manure it to prejudice the Pasturage. But yet in some
 direct Proprietors so that Soil found therein would belong to him alone
 and if the Vassal should rise out and labour that Ground, whereof he enjoys the
 common Pasturage, he would be guilty of *Purpresture* *Shair Lib. 2. Tit. 11. §. 1.*
 As the Lacerator Incloser or Appropriator of any Part of the King's common
 Manns or Commons, commits *Purpresture* and is punishable according to
 the old Law and Custom *Shair Lib. 2. Tit. 11. §. 1.* which was an arbitrary Punishment
 and the Loss of the Offender's Lands held of the King. *Observ. on Act 80. Par. 10. §. 3.* But yet *Purpresture* is not inferred from *incroachment*
 upon the Superior's Commonly, but only upon his Property *Craig Feud. Lib. 3. Tit. 5. §. 3. vers. In jure nostris scriptis circa fin. Nam Jhd. George*
of St. Martin Styles Dag. 655. tells us that he saw a Signature, procured
 for the Town of *Concubugh* from the King of all the Cellars Vaults Fops
 Chambers or what else under Ground, or the high Streets of the City and
 Streets as fallen in his Majesty's Hand by the Heretors incroaching on the
 Streets belonging to him: But the Magistrates took no Advantage
 of the Heretors whose Property ~~was~~ was thereby ratified, only
 they made these Heretors pay the Expenses of the Gift. *In George Melchior*
deeds (Observ. on Act 80. Par. 10. §. 3.) of building ^{up} ~~the~~ Streets of Burghs of
 Regality by Vassals of the Regality, or building a Foot or two further than for-
 merly in Burghs royal, be punishable as *Purpresture*. But that could be
 only understood an *incroachment* by the King's Vassal upon high Ways as
 belonging to his Majesty; and the high Ways which are so changeable and
 often

often changed, being secured by particular Statutes containing mildor Penes
 and Penalties than *Purpresture*, the Lord *Shair (Jhd.)* conceives that *Purprest-*
ure could hardly be inferred from invading the high Ways.

Any *incroachment* that amounts to *Purpresture* must be known and man-
 -ifest as where a Vassal excludes his Superior from a considerable Part of a Man-
 -ment, or incroaches upon his uncontested Marches. For a Vassal is not charge-
 -able for meddling with his Superior's uncontested Property, as when the Vassal
 breaks in upon his Superior's Marches which we not clear by Marches Terms, & an
 antecedent Cognition *Shair Jhd.*

Formerly *Purpresture* was competent to be judged in no other way as
 the Degree of a Baron *Act 80. Par. 10. §. 3.* But now that as all other general In-
 -fringings inferring Recognition of the Fee being only to the Jurisdiction of the
 Lords of *Session* *Shair Jhd.* and in Cases of *Purpresture* we generally pursue
 Actions of *Molestation* or *Declaration of Property* *Shair Jhd.*

Act 3.

How far Return of Fee is to the Superior upon so
 second of the Acts of *Parliament* and *Statutes* *Shair Jhd.*
 it more of *Parliament*.

Upon any of the numerous or innumerable Acts of *Parliament* or *Statutes*
 -ally given to the Superior may challenge the Fee as his own,
 in a *Declaration of general Recognition* *Shair Jhd.* the Fee is the same, ex-
 -cept as to the particular Acts inferring Recognition, which must be specially
 labeled.

Craig Feud Lib. 3. Tit. 5. §. 11. asserts that *terra nova* or *conquest* become
 extinct and return to the Superior by the Vassal's *Delinquency*; but that *terra*
vetera or *heredage* become thereby extinct only as to the Delinquent and his
 Descendants and without returning to the Superior pass to his next collateral
 Heir, who would otherwise have succeeded for the Issue of the Delinquent's
 Body, who must enter Heir to the Delinquent's *Successors*. But the Lord
Shair Lib. 2. Tit. 11. §. 11. thinks that that will return to much the Interest
 of Superiors and that in *Custom* and *Style* doth not allow of entering any
 Person Heir to one deceased while a nearer is in Being, whatever Time
 that nearer Heir be guilty of, *Parliament* accepted.

Craig (Jhd. §. 11. in fin.) moves without determining, a Question whether
 a Vassal being guilty of both a *feudal Delict* inferring Recognition, and a pub-
 -lic Crime punishable by *Forfeiture*, the Fee should fall to the King or
 to the Superior, or if the Oblainer of the first Sentence of Recognition
 would be preferred? The Lord *Shair (Jhd. §. 33.)* makes the Preference de-
 -pend upon the first Delict. Because that sufficeth, if insisted upon, to ex-
 -tinguish