

gifted by the Superior to another Stair Feud. 5. 7. & Lib. 2. Tit. 4. §. 23. If  
 Fee is full by a conjunct Fee, or reserved Liferent of the Feud, there can  
 no Plea for Nonentry: Because, tho' the Vassal may, notwithstanding  
 said conjunct Fee or Liferent, enter to the Fee, he can have none of the  
 -fits while these last. But any other Liferent than a reserved one, doth  
 not bar Nonentry. Craig Feud. Stair Lib. 4. Tit. 8. §. 7. Again the Fee  
 being full by Infestment standing unquarrelled ~~for~~ 40 Years in the  
 -son of one and his Authours, clothed with present Possession, purgeth  
 preceding Nonentries. Albeit the Nonentry is not claimed upon the  
 Account of any of his Predecessors, but upon the Account of an Heir to  
 another Vassal that died in Feud from whom he derives no Rights, and  
 brought in so far only as concerned the Interest that subsisted in that  
 Vassal's Person 19 March 1629 Douglas and E. Angus contra E. Lind-  
 -dale and L. Ley. junct. 25 June 1629. Murray contra L. Fuchmartin.  
 Whereby not only the Dutys before the 40 Years are out of by common  
 Prescription; but the Nonentry it self and all the Dutys within the 40  
 Years are understood to be passed from, tho' the Infestments whereby the  
 Fee was full were not voluntary, but in Obedience. Stair Lib. 2. Tit. 4. §. 23. Tit.  
 8. §. 7. Because the Nonentry not being reserved or claimed for so  
 long a Time, is presumed to be relinquished by the Superior's tacit Con-  
 -sent. But such an Infestment without Obedience, doth not make the Lands full  
 against Nonentry fallen by Decease of a Vassal who died in Possession  
 25 June 1629. Murray contra L. Fuchmartin. And it is not ~~competent~~ or  
 not competent to any to defend his Fee against Nonentry, upon the  
 -ground of its being full by real Rights in the Person of another from whom  
 he derives no Interest 19. March 1629 Douglas and E. Angus contra  
 -L. Linddale and L. Ley. 2. Nonentry is excluded by the Superior's confirma-  
 -tion of an Infestment to the Vassal by his Predecessor, to be holden of the  
 Superior. Which Confirmation, if simple, is effectual from the Date of the  
 -Right confirmed. Stair Feud. & Lib. 2. Tit. 4. §. 23. pr. But Nonentry of a  
 Vassal is not excluded by any lease Infestment granted to him by his Pre-  
 -decessor, not being feu, tho' confirmed by the Superior: For such a confirma-  
 -tion imports only a passing from Recognition or any other Casualty arising  
 from want of the Superior's Consent. Stair Feud. Except lease Infestment  
 feu, because these while allowed by Law exclude Nonentry. *vid. infra* Page  
 3. Courtesy and Force are sufficient Objections against Nonentry.  
 Craig Feud. Lib. 2. Tit. 9. §. 4. Vers. Quod in vidua dicit. Stair Lib. 2.  
 Tit.

Tit. 4. §. 23. pr. Lib. 4. Tit. 8. §. 7. and so are settlements of Annual  
 -rent or other preferable real Burdens. Stair Feud. 4. Three subsequent Seiz-  
 -ures granted voluntarily to three Heirs successively, import an Exoneracion  
 from any anterior Claim of Nonentry: Is having the Fee full with  
 three consecutive Discharges. But so many Seizures granted to singular  
 Successors, would not hinder the Superior from claiming Nonentry Du-  
 -ties. Craig Feud. Vers. est et alia exceptio Stair Lib. 2. Tit. 4. §. 23. Lib. 4.  
 Tit. 8. §. 7. 5. The Superior's contumacious Refusal to insert the Vassal's  
 -Heir upon Precepts out of the Chancery 18 July 1678 Tullerton contra  
 Denholmes, or to enter himself in the Superiority when required in  
 -capacitate <sup>self</sup> for it. Stair Feud. is a good Exception against Nonentry.  
 But Nonentry of Lands holden feu has not excluded by forcing the feu-  
 -Duties with a Precept of clare constat whereby the Vassal seemed to chuse  
 to enter, seeing they were not returned Heirs albeit they were called in  
 the Declarator and so acknowledged by the Superior as apparent Heirs. Be-  
 -cause a Precept of clare constat is a favour which the Superior is not  
 -obliged to grant 18 July 1678 Tullerton contra Denholmes. Nor was a  
 Declarator of Nonentry, excluded by an Appripriser, charging the Superior  
 to enter him, without Offer of a Charter to be signed, and a 1/2 year's Rent 3 Feb.  
 1601. Ker contra Henderson 24 Jun 1601 Cowie contra Callhart. But the Ap-  
 -pripriser was found under no necessity to offer the bygone Nonentries *ead. die*  
 inter eadem. 6. Craig (Feud. 5. 4. in fin.) says, that when a Vassal is killed in  
 Battle for the Safety of the Commonwealth, there should be no Place for  
 Nonentry, but the Superior ought to receive his Vassal gratis. Which  
 is highly reasonable unless the Heir discover Contempt by not tak-  
 -ing Infestment when cited in a Declarator of Nonentry upon the  
 Superior's Precept, from the Date of which Precept in case of the Vassal's  
 Delay, the Fee is in Nonentry. Stair Feud. 7. The Vassal or his Heir to whom  
 the Nonentry returns, cannot make use of it against Subvassals, especially if  
 they be liable to the Subvassals in absolute general Warrandice, or special  
 Warrandice against Nonentry: Quia sub supervisionis auctori accedunt. Suc-  
 -cessori. Which Subvassals must pay their Proportion of the Expenses of the  
 -suit. But this Objection cannot be made to a Donatory of Nonentry, who is  
 only apparent Heir to the Superior obliged to warrant the Subvassals. Right  
 Stair Lib. 2. Tit. 4. §. 23.

But Nonentry is not barred by Tacitis set by the Vassal: Which are only real  
 Rights against Purchers, and cannot abridge the Superior of his Casualties.  
 Nor is Nonentry excluded by a Charter or Precept granted by the Superior