

will Infeoffment follow thereon Stair Jhd. Nor yet by Apprising and a Charge thereon against the Superior, to enter the Appriser, without offering a Year's Rent for the Land or Annual Rent of the Money 3 Feb. 1661 Per contra per Dorset. Nor doth the Vassals Minority stop Nonentry of Lands not held in Ward, or afford Restitution to the Minor as lesed: Because this Casually not from the Negligence of the Vassal, but from the Nature of the Fee, if it be the Superior's Fault that the Vassal is not entered, that will be a personal Objection against him Stair Jhd. & Lib. 4. Tit. 8. §. 8. Yea Nonentry in Place even where the Vassals apparent Heir is not to blame, for his not entering, as when he was hindered by a Question of Bastardy moved against him Stair Lib. 2. Tit. 4. §. 23, or was hindered by the first Branch of a Charter spe only neither born nor begotten, because of the Possibility of who existed the Entry of the nearest Branch in Being, was suspended 21 Jun. 1077 L. Melvil and his Son contra Bruce. But all Things that purge an apparent Heir of contumacy or contempt, exclude the Superior from the Feudal Rights and Duties Jhd. & Stair Lib. 4. Tit. 8. §. 8. As he is restricted in his Jurisdiction at his instance in the general Declarator.

When Decree of general Declarator is obtained, the Superior or his Donator may enter into Possession any legal Way he pleaseth. He may point the Ground upon the Decree of general Declarator. For albeit it were more formal, that a Declarator and pointing of the Ground containing different conclusions should have gone on together in several Summons's, and immediately upon decreeing in the Declarator Decree of pointing the Ground followed there might have been pronounced: Yet these two Actions, the one declaratory and the other petitory, use to be combined in the same Libel Stair Lib. 4. Tit. 8. He may also pursue for the Feudal Rights and Duties in an ordinary Action before any Judge competent Superior or inferior, called a special Declarator, against Intruders with the Rents. The special Declarator takes Effect from Citation in the general Declarator: From which Time the general Declarator does the Nonentry, and decerns for the Duties preceding the Summons 25 July. 1666 Harper contra his Vassals. But this Action of special Declarator is not run as the general Declarator: For the Ground cannot be pointed for the same, only Intruders with the Rents are liable in Payment Stair Lib. 2. Tit. 8. §. 22. Seeing apparent Heirs have annam deliberandi after the Predecessor's Death, albeit the general Declarator may proceed within the Year of Deliberation yet Action for pointing the Ground, or Action of special Declarator for Payment of the full Rents, ought to stop till that year is elapsed.

Sect. 2.
of Relief.

Relief, is that Acknowledgment the Heir pays to the Superior for entering

entering him as lawful Successor to the last Vassal. Some as Sir John Skene (De verb. signif. verb. Relevium) whom Sir George Mackenzie (Insta Lib. 2. Tit. 8. §. 21) follows will have this Casually to be called Relief (in Latin Relevium) because it is paid for relieving the Land out of the Superior's Hand, into which it had fallen by the Death of the Vassal from the French relever or the Latin relevarre to lift or take up again. But the Lord Stair (Lib. 2. Tit. 4. §. 27. Vers. Relief) thinking this Derivation too narrow, because Relief is a general feudal Term adapted singular as well as universal Successors; makes it import an Aid or Subsidy to the Superior, going (Feud. Lib. 2. Tit. 2. §. 12) after Cujace the Original of this Casually from the Novel Constitution of Leo the Emperor bearing it to be the Custom of some Dioceses to let the Superior have that Year's Rent in which he receives his Vassal's Heir into his Protection, in Place of the Predecessor or a certain Sum of Money, whether for relieving the Fee out of the Superior's Hand, or his renouncing it to the Heir, for as in the Civil Law a new Purchaser entering in an Emphyteutic paid to the Overlord a 50th Part of the Valuation as an Annuity called Laudimium l. ult. C. de jure Emphyt. So the Feudal Law made it Casually due to Superiors for entering singular Successors & Vassals in their Fees, which differed in different Dioceses. In some Dioceses it was a 5th Part of the Price, and a 6th Part of that left v. g. When the Price was 100 crowns, the Composition paid for Entry was 24. This Casually was afterwards due to the Superior by the Feudal Law when an Heir or Universal Successor entered.

From thence we had it introduced among us at first by Racione in which L. Maccom 2. called Mr. Kenneth, who gave all his Lands of Scotland to his Subjects, reserving only the royal Power, and his male-Heir of Seone where he had his Court. In Reimpenance whereof they gave him the Ward and Relief of their Heirs, for sustaining his princely Dignity Leg. Malcolmii cap. 1.

Some of our Lawyers as Sir John Skene (Jhd.) are of Opinion that this Casually is peculiar to Ward Holdings. But Sir John (Feud. Lib. 2. Tit. 2. §. 13.) from whom the Lord Stair (Jhd. Jhd. Jhd.) follows, think it due at the Renovation of Infeoffment to Heirs in every Fee. And there seems to be Reason for their thinking so, seeing albeit Relief is considerable only in Ward Holdings, yet all Fees requiring a Renovation are liable to it: And Precepts issued forth of the Chancery for infeoffing Heirs in Feud or Glebe Fees, bear the Clause capiendo Securitatem pro duplicatione feudi firmæ vel alio firmæ for the Double of the Feu or Glebe Duty, if the Charter contain not the ordinary Clause duplicando feudi firmam vel alio firmam primo anno introitus. Hope Jhd.

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