

renunciation 19 July 1625 E. Morton contra his Tenants Stair Lib. 2. Tit. 9. s. 22. yea Reduction for not Production of the principal Feud in a Process to which the Subtenant was not called, was not sustained as a Ground to make the Subtack fall in Respect the Letter of the principal Feud had consented to the Subtack 13 Decemb. 1626 E. Galway contra M. Ullach. But tho a Subtack per se be a sufficient Title to maintain Possession; yet it is not sufficient to pursue upon, without showing the principal Feud, if not acknowledged by the Defender Stair Ibid.

By the Law of England, if a Lessee for Years be cast out of his Farm before his Term expires, there lies for him a Writ called Ejectio firmæ, or Ejectment. Reg. Orig. 227. which differs from the Writ quære ejecit infra terminum, only in this, that the latter lies where the Lessor after the Lease made infeoffeth another who ejecteth the Lessee and the former lies against any Stranger that ejects him. But the Effect of both is all one, that is to recover the Residue of the Term.

I shall consider in the next Place how Feuds may be transmitted by Succession, and by Deeds inter vivos. Apparent Heirs have Right to Feuds set to the Predecessors and their Heirs without Necessity of a Service. 1 July 1675 Hume contra Johnston, even when Heirs are not there mentioned. Sir John Nisbet Doubts and Questions of the Law Tit. Feud. does indeed think, that a Feud set to a Person for a certain Number of Years without Mention of his Heirs and Exors, imports only a Right to the Feudman if he live so long and would not go to his Representatives, in case of his dying within the Term of these Years: Because Feuds being stricti juris, industria et conditio certa personæ is herein considered, and Heirs may be Infants void of such Qualification. And there is an old Decision (Hud. prat. ii. p. 106. 1699) to this purpose. But Sir James Stewart (Answers Ibid.) holds, that such a Feud would not be now thought merely personal, and would pass to the Feudman's Successors for the Space of the Feud remaining at his Death. It was debated but not decided 23 January 1678 D. Lauderdale contra E. Sweddale, whether a Feud of Feud set to a Person and his Heirs in particular Lands would belong to his Heirs whatsoever, when these Lands are set by or adjudged from him? But there seems to be good Reason, why in such a case the Feud should go to Heirs whatsoever. For the Qualification in Favour of Heirs in such or such Lands is only designed to clear the Feud's Intention as to the Persons he desires to succeed him in the Right of the Feud, and no Limitation or Clause irritant inferring the Loss of them upon his being divested of the Lands. Feuds are conveyed inter vivos, either by voluntary Assignation, or by the legal Diligence of Creditors of the Feudman. According to the Civil Law, letting out and hiring being a Contract bonæ fidei, the Tenant may sublet or assign his Right l. 24. s. 3. ff. locuti.

But

But by our common Practice (tho we have no express Statute for) a Feud granted to one for a certain Number of Years is stricti juris, and no further extended than is expressed. So that such a Tenant cannot assign his Feud, nor grant a Subtack, unless his Feud bear a Power so to do Stair Lib. 2. Tit. 9. s. 26. That is, he cannot assign unless the Feud be expressly granted to him and his Assignys. Nor can he grant Subtacks put in or put out Tenants, or remove any Possessor not having the Possession from himself; unless the Feud be conceived in Favour of him and his Subtenants or bear expressly Power to input and output or remove Tenants. Nor yet can a Feud granted to one and his Subtenants, without mentioning Assignys, be assigned 3 January 1672 Lady Binnie contra Sinclair. Again a Feud of Lands not mentioning Assignys, do not accrue to the Feudman's Heir if he be dead by him in the Land with absolute Hereditas, as per superveniens authori 18 June 1600 Hume contra Lyel. Feuds granted to Women fall or rather sleep during their Marriage, which is a legal Assignation, but revive by the Husband's Death, Craig Feud. Lib. 2. Tit. 10. s. 5. Vers. Si curus successive Stair Ibid. The Reason why Feuds are not assignable when Assignys are not expressed, is founded upon the Nature of the Right, whereby the Master of the Feud affects a particular Choice of his Tenants. The assigning such Feuds, or granting such Subtacks by Persons not having a Power so to do so doth not annul the Feud, but only the Assignation or Subtack is null as unwarantable Stair Lib. 2. Tit. 9. s. 16. Albeit Feuds for Years cannot be passed over or transmitted by a voluntary Assignation unless they contain a Power to assign; yet they may be appropiated or adjudged 10. Novemb. 1600 Drummond and Strick Bishop of Andrews contra Dalrymple: As Reversions expressly including Assignys, and even personal Faculties are carried by Appropriating or Adjudication. Such a Feud for Years falls under the Feudman's single Escheat Stair Feud. s. 24. Tho set for 50 or 60 Years M. Kenzie Observ. on Act 15. Par. 22. J. 6. A Life Feud may be assigned, tho it mention not Assignys, Craig Feud. Lib. 2. Tit. 9. s. 9. ult. Feb. 1637 Hume contra Crau 18 July 1672 Duff contra Fowler, and so may Feuds of more Importance, as Feuds for many Nineteen Years be assigned Stair Ibid. A Feud set to one for his Life and for the Lifetimes of his Heir and Nineteen Years thereafter being assigned, the Assignys Right will continue after the Tenant's Death during the Lifetime of his apparent Heir tho he be never served Heir. But if the Tenant was a Bastard