

SECT. IV.

Can a Superior interpose another betwixt himself and the Vassal, or divide Superiorities?

No. 9.

1610. November 6. STEWART *against* LORD ABBOTSHALL.

The King may not interpose a superior betwixt himself and those who become his vassals, by the act of annexation of kirk-lands to the Crown, affirmed by my Lord President to have been practised *in foro contradictorio* betwixt Colonel Stewart, having Pittenween erected, and the Laird of Abbotshall, after the year 1587 or 1592.

Fol. Dic. v. 2. p. 407. Haddington MS. No. 1998.

No. 10.

A superior cannot interpose any person betwixt himself and his immediate vassal.

1670. June 25. DOUGLAS, LAIRD OF KELHEAD *against* TORTHORELL, &c.

In a declarator of non-entry at Kelhead's instance, as being infeft in the barony of Kelhead, whereof the lands of ————— were a part, it was alleged, That the defender's predecessors were vassals to the Earl of Carlyle, and were never entered by the pursuer or his authors; neither could the pursuer have right to their superiority, because he himself was only infeft base to be holden of the Earl of Queensberry, who could not interpose a superior betwixt them and him, and could have only right to the by-gone non-entries, which they were not obliged to pay, until the Earl of Queensberry should grant them a precept for infefting them in the said lands to be holden of him as superior. The Lords did ordain the whole by-gone non-entries to be consigned in the Clerk's hands; until Kelhead should procure a charter and precept, subscribed by Queensberry, for receiving them as his vassals; which being done, they ordained all the preceding non-entries to be paid to the pursuer, not as superior, but as having right by assignation, which was equivalent as if he had been donatar; but they found, that his right being base, he could not be their superior.

1670. July 2.—In the foresaid declarator of non-entry, at Kelhead's instance against Torthorell, the pursuer insisted for the mails and duties of the lands from the date of the citation of the defender, as having been *in mora* from that time. It was alleged, That there being no general declarator of non-entry, and the citation being only upon a summons concluding both special and general declarator, there could be no decret of the mails and duties but from the date of the

sentence and after probation in the special declarator. The Lords, after reasoning among themselves, inclined to give decret for the mails and duties from the date of litiscontestation in the special declarator; but, because the pursuer alleged there was a practick *in terminis*, finding them due from the date of the citation, they ordained the practick to be produced.

No. 10.

Fol. Dic. v. 2. p. 406. Gosford MS. p. 121. & 126.

* * See No. 24. p. 9306. *voce* NON-ENTRY.

1672. November 26. EARL of ARGYLE against LAIRD of M'LEOD.

The Earl of Argyle pursues a declarator of non-entry of certain lands, holden by the Laird of M'Leod of the late Marquis of Argyle. The defender alleged, Absolvitor, because the lands are full, in so far as the defender's brother being retoured heir to his father in these lands, the retour expressly bears, that the lands were holden of the King, by reason of the forfeiture of the late Marquis of Argyle, and thereupon he was infeft by the King; likeas the defender was in the same way as heir to his brother, and stands infeft holden of the King. It was replied, That the pursuer repeats his reduction of the defender's retour, and that the same is null, in so far as, before the defender was retoured, the King had granted a gift to this Earl of his father's forfeited estate, so that the Earl returned to be superior to M'Leod, and vassal to the King, in these lands; and albeit the inquest are excusable, that they served the defender conform to his brother's service, yet the defender is not, who, by the public registers, might have known that the Earl of Argyle was returned to be his superior. The defender answered, That it is a fundamental law of this kingdom, that the King, nor any superior, cannot interpose another superior betwixt him and his immediate vassal; and the King having, after the forfeiture, received M'Leod as his immediate vassal, could not thereafter interpose the Earl of Argyle by his gift; which, if it had been done by any other superior, would have been without question; and in this the King *utitur jure communi*. It was replied, That if the King, by any gift, had admitted M'Leod as his immediate vassal, he could not thereafter have interposed another; but there is nothing done here but a retour and infeftment thereupon of course.

No. 11.

Exception in the case of forfeiture.

The Lords repelled the defence, and found the King might interpose a superior in place of the forfeited person, having by no gift nor express deed accepted the vassal of the forfeited person in his place.

The defender farther alleged, That he having so probable a cause of mistake, the reduction of his retour can only take effect from the citation on the reduction, or on the non-entry; for reductions are no further drawn back ordinarily; and this case is most favourable, for the late Marquis of Argyle having taken a gift of