

SECT. XIV.

A Superior bound to enter the Vassal, reserving his own Right.

1626. December 21. TOWN of EDINBURGH *against* LOGAN.

No. 72.

Altho' the person charged to enter a vassal claim the property itself, he must still obey the charge reserving his own right.

In a suspension of charges upon precepts out of the Chancery, executed at the instance of Andrew Logan of Cottfield, and charging the Town of Edinburgh to receive him in certain lands, wherein he was retoured heir to his father, to be holden of them as superiors; the Lords found the letters orderly proceeded; notwithstanding that the Town of Edinburgh, in their suspension, alleged that they were not superiors of the lands contained in that retour, but that his father held the same of the Laird of Restalrig, from whom the superiors had no right to the superiority of these lands contained in the retour, and that any right which the suspenders had, was a right of property, acquired from the King's Majesty's predecessors, by the space of sixty years since, and which lands they have bruiked continually since, as their property, without interruption; so that the said retour could not be of force to cause them receive him their vassal in their own property, and thereby to prejudice themselves of their rights. Notwithstanding of which reasons, the charges were found orderly proceeded, in respect of the retour standing; but it was declared, that this should be but prejudice of the suspender's right, and that their entry of him upon the said retour should not derogate from their right in any sort, which otherwise lawfully remained in their persons, and they might also refuse; *qua casu* the charger had recourse to the Chancery; for there were no letters of horning here, nor in such cases, but execution upon precepts out of the Chancery, whereupon no horning follows, but the party may refuse or obey, as he pleases.

Act. Hope.

Alt. Belshes.

Clerk, Hay.

Fol. Dic. v. 2. p. 410. Durie, p. 250.

* * A similar decision took place, March 11, 1636, betwixt Scott and Elliot of Stobbs, No. 20. p. 201. *voce* ADJUDICATION, where the person charged to enter, the compriser suspending, that he was not superior, yet the letters were found orderly proceeded, but prejudice of the rights of all parties having interest, *prout de jure*, unprejudged thereby; as the note there made bears.

Durie. Ibidem.