

1624. July 29. LORD CAPRINGTON *against* LORD KEIR.

No. 17.

The Lords found, That the immediate superior was not bound to receive the vassal till all the non-entry duties of his immediate vassal were paid.

*Fol. Dic. v. 2. p. 407. Durie.*

\* \* This case is No. 18. p. 6897. *voce* INFECTMENT.

1628. July 16. LORD WIGTON *against* LORD YESTER.

No. 18.

“ Quæstio est, utrum in his feudis quæ alio domino, quam de Rege tenentur, dominus feudi vassallo renovare investituram teneatur, antequam censum ei omnium annorum quibus feudum vacaverat, plene exsolverit, cum præceptum Regis hanc habeat conditionem “ *faciendo vobis quod de jure facere debet*” quæ licet plene astringant vassallum, ut domino satisfaciatur, antequam beneficium ab eo accipiat, tamen censuit senatus, cum in dominorum sit potestate feudum pro censu cum velit distringere, ne hoc quidem in mora esse debere, cur investituram differant; Craig, L. 2. D. 14.

Against this opinion it was decided in this case, where it was found, That my Lord Yester was not obliged to infeft the Earl before he paid him the retoured duties of the lands during all the years they were in non-entry; for it was thought hard to compel the superior to infeft his vassal, and then to put him to an action for the by-gone duties, which are ordinarily of no great avail.

*Fol. Dic. v. 2. p. 407. Spottiswood, p. 95.*

\* \* Craig’s opinion may be reconciled with the Lords’ decision thus: for when the retour containeth a liquid silver-duty, all the by-gones thereof must be paid before the superior be obliged to infeft his vassal, as in the above decision; but where the duty is not constituted or liquidated, as in wardlands, it is not reason to hinder the superior to infeft the vassal, because he is not paid of the non-entry duties subsequent to the ward, but he must pursue for it by way of action, as was found betwixt Marion Peebles and my Lord Ross, (*infra.*) *Spottiswood. Ibidem.*

1630. January 23. PEEBLES *against* LORD ROSS.

No. 19.

In a suspension at the Lord Ross’s instance, of charges at Marion Peebles’ instance, upon a precept out of the Chancellery, upon her retour as heir to her father, to infeft her, the Lords found, that the said charges, and her infeftment by

Distinction where the duty is not constituted