

Proprietor would make in his own Ground, be contrary to any Law or Custom, or if it be an Undertaking that is against a Title or Possession to the Prejudice of a Neighbour, who might thereby ^{some} Damage, the Neighbour may hinder him from making it, and will likewise recover Damages for what he shall suffer thereby. Thus he who digging in his own Ground beyond the Distance which is allowed, should endanger the Foundation of his Neighbour's House, would be answerable for it l. 24. s. 12. f. de dam. infect. If rain Water or other Waters have their course regulated from one Ground to another, whether it be by the Nature of the Place, or by some Regulation, or by a Title, or by an ancient Possession, the Droppers of the said Grounds cannot innovate any Thing as to the ancient Course of the Waters. Thus he who has the upper Grounds cannot change the course of the Water, either by turning it some other Way, or rendering it more rapid, or making any other Change in it to the Prejudice of the Owner of the lower Grounds. Neither can he who has a lower Estate do any Thing that may hinder his Grounds from receiving the Water which they ought to receive, and that in the Manner which has been regulated, Les Loix Civiles de Tom. 1. Part. 1. Liv. 2. Tit. 8. Sect. 3. Art. 11. He who pretends that a new Work which another undertakes is prejudicial to him, ought to apply himself to the Judge, who may prohibit him either to begin the Work, or to continue it if it is begun, till Judgment be given whether the Work ought to be permitted or forbid. And these Prohibitions may be granted provisionally upon bare Complaint of the new Undertaking if it be anywise doubtful whether it may do Hurt or not l. 1. pr. ff. de oper. nov. nunc. Thus the Proprietors of a Salmon Fishing in a River, having given in a Supplication to the Parliament, bearing that the Heretofore of Land adjoining, did by cutting out a Lock upon his Grounds, to that River do Prejudice to their Fishing, and craving that the same might be stopped: The Parliament remitted the Bill to the Lords of Session who, before Answer, granted Commission to try the Condition of the Lock, how it run before and would run after the Draining, and how long the Draining would continue, and what Alteration was made in the Fishing thereby; June 1661. Mayor of Berwick and others contra L. Flaying. The Parliament sometimes restrains the Exercise of Property, for the Good of the Commonwealth. V. g. Persons are discharged to lay green Lint in their own Locks and running Burnd under the Pain of 40 Shilling and Confiscation of the Lint to the poor of the Parish, to be tried and uplifted by the Kirk Session Act 13. Part 1. s. 6. Because the Water thereby infected is hurtful to Fishes and Beasts that breed thereof.

thereof, unprofitable to humane Use, and noisome to neighbouring Peoples

Having shewed what Rights pass to the Vassal by Inheritance and Infeoffment, I am next to explain what belongs properly to the Superior, and the Superiority, and Casualties thereof.

Chap. 3.

Concerning Superiority and the Casualties thereof.

The Right a Superior hath and the Obligation upon him by the feodal Contract is either fixed and permanent or casual.

His constant Right and Obligation is branch'd out into the following Heads.

1. The Superior in old Time wanted to know the Nature of his Vassal's Holding, and in what he was liable to him as Superior, used to call for Exhibition of his Vassal's Evidents by an Action for shewing the Holding, in which Case the Vassal failing to produce, lost his Fee. And the King sometimes got an Act of Parliament, ordaining all his Vassals of such a County, to shew their Holdings and produce their Evidents, Act 245 & 262. Part 15. s. 6. Sometimes his Majesty ordain'd them to produce their Evidents by a Proclamation M. Henr. 8. Obs. on d. Act 245. Which Statutes and Proclamations were necessary in those Times, when the Sovereign's Revenue was not established nor his Vassals well known. Sometimes again the King summoned his Vassals to appear before an Inquest, to shew their Holdings, or what Right they pretended to such Lands Stat. Rob. 3. Cap. 36. Act 9. Part 1. s. 1. But now a Superior forces his Vassals and others claiming under them to produce and exhibit their Rights by a Reduction and Improbation when needful, with Certification, that otherwise they will be declared false and forsworn. For tho' in Law, nemo tenetur edere instrumenta contra se: Yet Vassals are oblig'd to exhibit their Evidents to their Superior, because he as dominus directus hath a true Interest in the Land, and if the Vassal pretends any Interest, he should shew it and instruct the Superior what