these fructus dominij directi of Lands are considered as fructus pendentes of Lands Stewart Inst. Tit. Casualties of Superiority. Casualties which are Fruits of Superiority and have tractum temporis as Ward Nonentry &c. being gifted the Gift will be effectual during the whole Time of their Endurance, not only against the Donor and his Heirs, but also against his Singular Successors. For such a Gift is not of the Nature of Assignation to Mails and Dutys, which importing an annual Cession, is effectual only during the Time that the Cedent continues Proprietor; but as to Assignation to a Superiority that transfers the Right Steward Inst. Tit. Gifts of Wards and Nonentry prejudge Sing. Succ. A Disposition of Superiority to the Vassal himself, was found to import an Assignation to the bygone Feu Dutys needing no Intimation; and sustained to cure the Assigney from being called in Question for these Feu Dutys a singular Successor first infeft in the Superiority upon a posterior position 19 December 1676 E. Argyle contra Lord M'Donald.

14. All Gifts by the King of his Casualties of Superiority before they are vacant or due, are null as surreptitious or obreptitious and hurtful to the Crown: And a Gift not expressing medium vacandi is null M'Kenzie Observ. on Act 23. Par. 1. Ja. 6. But where subject Superiors, qui debent sibi ipsis have gift their Casualties by Anticipation, such Gifts are not null but the Casualty occurring thereafter accrues to the Donatary 17 Feb. 1675 Stewart contra L. Forrester.

15. Some Casualties of Superiority require a Declarator, that they are fallen to the Superior Others belong to him as Dominus directus, without any preceeding Declarator, as Ward.

Some Casualties of Superiority are common to all Manners of Holdings; and a third Sort are appropriated to particular Fees. viz.

Tit. 1.

Casualties of Superiority common to all Holdings.

These are such as carrie the Right of the Fee it self back to the Superior, upon the Account of some atrocious Offence committed against him by the Vassal, and are called Recognition in general: Because the Superior in such a Case comes to know & gain the Fee as his own Property, and remembering how he has been undutifully served by his Vassal vindicates or challenges it to himself. According to the Opinion of the Doctors

Doctors of the Feudal Law, the Lord or Superior is bound pari poena to observe and comply with the Terms of Relation on his Part, in as much, that if he neglect to protect or defend his Vassal, or do any Thing prejudicial to him, or injurious to the feudal Relation, he loses his Superiority or Interest in the Feud which accrues to the Vassal, Stryk Ex. am. jur. Feud. cap. 2. §. 50. Craig Feud. Lib. 3. Tit. 6. § 13. The Duties and Advantages of their Relation being reciprocal and equal, and inforced at the Peril of their several Interests. But our Custom hath never yet made the Superiority to accrue to the Vassal upon the Superiors Delinquency.

Lawyers are not altogether agreed about the Reason of such reverting or Return of the Fee to the Superior upon the Vassal's Delinquency. Some assert, that this is [illegible] Right. But it can hardly be thought that the Fee should return to the Superior upon that Footing, unless we had a clear positive Law for it: Since we are universally agreed, that is juris publici belonging to the Magistrate, as a Vassal often forfeits his Fee for these without any Benefit to the Superior who as a private Party can claim only Reparation suitable to the Damage sustained by him. Those say, that Fees being originally gratuitous so that no Return is made for an onerous Cause that Cause is not presumed to be equal to the Benefit they shall retain the Nature of Donative and are revocable ob ingratitudinem But neither is this a sufficient Reason for the Return of the Fee; most of Fees being now granted for an equivalent Price which cuts off all Plea for Ingratitude. Nay the most proper Fees were never pure Donatives, but a Kind of innominate Contract to all Facias by which Service was claimed from the Vassal and not left to his Discretion or Principle of Gratitude. Further in the most proper Fees as Blench and Ward-Holdings which are of a Nature bearing some Resemblance to allodial and more gratuitous than others we find the severest resolutive Delinquencies. A Third Sort conceive more probably the Superior's Intention of the Fee to flow from this that Acknowledgment of him and Fidelity to him, being essential to all Fees tho not expressed, they imply this resolutive irritant Clause, that if the Vassal fail in his Duty his Fee becomes void: And if the Fee was truly gratuitous, the Vassal's Breach of Trust and Infidelity is more odious.

The forein Feudists reckon up a great many Acts of Infidelity and Disloyalty, whence they are pleased to infer the Return of the Fee to the Superior, whereof few take Place in Scotland. And our own Craig (Feud. Lib. 3. Tit. 5. §. 3. Vers. Etsi jure nostro & seq. §. 4. 7. Tit. 6. §. 1. 2. 3.) tho he restrict the Number, proposeth not a few that are not owned in our Practice