

linguish the Fee; and the Sentence of Forfeiture being declaratory operates
-tro from the Commission of the Deed upon which it proceeded.

It is all a Matter, whether a Deed inferring Recognition, was committed
by the Heir or apparent Heir of a deceased Vassal; But the Deed of an apparent
Heir the aliqui successurus, in his Predecessor's Lifetime, could not infer
Recognition, whether he dies before or survives his Predecessor, feudal
-litt being now so little extended than it was.

The Vassal's unaffected Ignorance or Weakness excuse the feudal Delin-
-quencies. Nor are they incurred from necessary Deeds of self-Defence against
the Superior attacking his Vassal, or atrociously injuring him; or by
in Obedience to lawful Authority; or in Defence of a more ancient Superior
in Ward Holding; or by Words reflecting on the Superior's Fame, uttered
the Vassal when judicially examined as a Witness. Stair Feud. Lib. 2. Tit. 2. §. 5.

Because of the mutual Friendship and Union betwixt the Superior and
Vassal, feudal Delicts especially if not questioned while both Parties are
-vivo are understood to be easily passed from: As by the Superior's owning his
Vassal after he knew thereof, or his long Forbearance to ~~be~~ quarrel the Vassal
-sal for it. Craig Feud. §. 10. Stair Lib. 2. Tit. 11. §. 33. But the Death obliterates
-crimes as to punishment: Yet Rights arising to the Superior by feudal Delin-
-quents, are not cut off by the Delinquent's Death; if the Superior was ignorant
thereof, or not in a condition to challenge them.

Tit. 2.

Casualties common to most Holdings.

These are such as intitle the Superior to the Profits of the Fee for a Time
-viz. Nonentry, Relief and liferent Escheat. Which I say are common to
most Holdings: Because they do not take Place in Burgage or Incorporation
where the Vassal being a Community or Corporation never dies, nor is Minor
or married; and so can neither be liable to Ward, Nonentry, Marriage, or life-
-rent Escheat (Craig Feud. Lib. 1. Tit. 10. §. 21. Lib. 2. Tit. 21. §. 1. Pr. But the
-learned Craig Feud. Lib. 2. Tit. 19. §. 7.) restricts this Privilege, to royal
Burgage, and allows Lands belonging to Burghs of Regality and Barony
to fall in Nonentry. And albeit Administrators, as Magistrates of Burghs
Masters of Colleges, were denounced for Debts due by the Incorporation,
that's presumed to be the Effect of their Negligence, which ought not to pre-
-judice the Society. Stair Lib. 2. Tit. 4. §. 67. M'kenzie Inst. Lib. 2. Tit. 5. §. 26.
But Sir James Stewart (Answers to Tirllet. Doubts Tit. Liferent Escheat)
says, that on a Charge of Forning against a Burgh their single Escheat may
follow.

follow. And both single and liferent Escheat of private Burgesses falls to
the King albeit they pay no Nonentry Duty: M'kenzie Inst. Lib. 2. Tit. 5. §. 20.
Sir Robert Spotswood (Pratt. Tit. Barony Burgh and Customs thereof) says,
that neither Burrow Lanes nor Burrow Mails due to Magistrates ^{of Burgh} fall in Non-
-entry, except in so far as they represent the King.

Sect. 3.

Of Nonentry.

Nonentry is a ~~Right~~ Casualty by which a Superior has Right to the
Mails and Dues of the Vassal's Lands when the Vassal is void by his Death,
and his Heir neglects to enter thereto, when he might and should so to raise
Feud. Lib. 2. Tit. 19. §. 1. or void by Resignation of his entered Vassal's Right. 12
July 1675 L. Cathcart contra L. Horse all Feud. Lib. 2. Tit. 19. §. 1. contra
L. Westgaw.

The feudal Customs make a Vassal forfeit his Fee for not offering his
Fidelity to the Superior and to be entered by him within Year and Day after the
Predecessor's Death (Craig Feud. Lib. 2. Tit. 19. §. 1. Tit. 21. §. 1. Our Custom is different
to the Vassal by neither making him lose his Fee for Nonentry, nor the
Profits of it all the Time it is void; but the Vassal's Right is safe in the Superior
and putting the Fee in the Superior's Hands (Craig Feud. Lib. 2. Tit. 19. §. 1. Stair
Lib. 2. Tit. 9. §. 18. See Reason hereof, is because the Superior having put
out his Fee to the Vassal for Service, he is ^{to be} ~~to be~~ put out for Fee when there
is no Vassal entered therein: that with the Heir's Consent he may provide
Vassal to serve him. For the Heir's Predecessor's Infestment suffice to main-
tain the apparent Heir's Right against others than the Superior, it hath no Ef-
-fect against him ~~it~~ after a special Declarator had the Vassal enter. Craig Feud.
and complete his Right by Infestment. According to the common feudal
Customs, an Investiture was not only required to constitute a Fee; but also
believed to be renewed at the Change of every Superior and Vassal, Gibeles
de pure noviss. Part. 2. Cap. 6. Loes. de Feud. §. 12. Because they exact a per-
-sonal Oath of Fidelity, which ought to be renewed when either of the Parties
in the feudal Contract is altered. But our Custom requires not the Contract
to be renewed at the Change of the Superior, for that no formal Oath of Fidelity
here is made to him, but only at the Change of the Vassal: Quia nulla sa-
-sine nulla terra, there is no Fee without Service (Craig Feud. Lib. 2. Tit. 12.
§. 2. & 14. In France and England mortuus est it vivum us they phrase it,
There is no Renovation of Infestment to Heirs, but a special Retour per-
-fecteth easily the Heir's Right to the Fee, neither Lands held by free Burgage, nor a
-^{but of such Lands fall under non-entry, and it is now Decembris 1688 Thomson contra Thomson.}
The Superior or his Donatary cannot enter to Possession of the void Fee,
till he obtain a general Declarator of Nonentry (Craig Feud. Lib. 2. Tit. 19. §. 3.
Wherewith it sufficeth to cite the apparent Heir of the deceased Vassal, Stair
ibid.