

Murray. Feuds set before the Rebellion and completed by Possession within Year and Day do also bar the Liferent Escheat 19 January 1672 Beaton con- tra Scot. Stair Lib. 2. Tit. 4. §. 66. Lib. 3. Tit. 3. §. 26. For Liferent Escheat being one of these Casualties of Superiority arising by Statute or Custom upon Disobedience to Law or civil Rebellion, differs from Ward Nonentry or Recognition, which flow from the Nature of the Fee; in that Liferent Escheat carries no more Right than the Rebel had in his person at the Dan- cing, and the expiring of Year and Day thereafter in a competition with Creditors anterior to the Rebellion Stair Fin. & Lib. 4. Tit. 9. §. 2. Yea Liferent Escheat doth not exclude Feuds set during the Rebellion without Diminution of the Rental Spaldwood Pral. Tit. Escheat L. Fullerton contra Dalziel Hope Maj Pral. Tit. Forning Charters contra McLeod Paton contra Drum- rash, Stair Lib. 2. Tit. 4. §. 66. because setting of Feuds is a necessary piece of Administration advantageous to both Superior and Vassal if he be kept up.

Tit. 3.

Casualties appropriated to particular Fees.

Casualties of special Fees arise either from express Paction, or from the Nature of the Fee.

Casualties arising from express Paction vary according as the Parties agree. Thus the Casualty of Marriage may be due by the Tenor of the In- vestiture in other than Ward Fees, as when Lands are held on Feu rent mu- rilogic.

There may be a Clause in a Feu Charter, that it shall not be lawful to the Vassal to dispose the Lands or any Part thereof without the Superior's Consent which if not conceived irritant or with an Irritancy, doth not make the Lands fall in Recognition to the Superior 20 July 1607 Blair of Carberry contra Creditors of Rig. Where in a Feu Charter it is declared, that if two Terms Feu Duty run in the third unpaid the Right shall be null, the Vas- sal doth not fall from his Feu unless he suffer the Feu Duty to remain un- paid for the Space of three complete Terms, the completing, and not the Currency only of the third Term being understood by such a Clause 19 June 1673 Smith contra E. Marshal. And this Irritancy, if incurred, is not al- lowed to be purged by the Vassal's offering Payment at the Bar.

But albeit in the Case of an Irritancy of non solutum canonem ingrossed in the Vassal's Charter, simple purging at the Bar is not admitted: Yet the Vassal reasonable Cause for purging his Default 13 Feb. 1666 L. Wedderburn contra Woodlaw, as an Offer of Payment to the Superior in due Time, and that he refused to accept of it: Which without Consignation was sustained to purge the

In which English Law provides a writ of cognovit

the odious Irritancy, upon the Vassal's renewing his Offer at the Bar 26 July 1670 L. Poirie contra Hunter: Tho' an Offer without Consignation cannot stop the Course of Annualrents. But no Term will be allowed for purging Mc Kenzie Observ. on Act 246 Par. 15. §. 6. So favourable is our Custom to Vassals, that slender Grounds have been sustained to disappoint such a se- vere Irritancy in a Charter of non solutum canonem. Thus when a Super- rior for instructing the Irritancy produced his Vassal's Retour bearing in the first Part of it which narrated the Right of the deceased or Irritancy for not Payment of the Feu Duty si peccatur tantum; the Vassal was allow- ed to purge by Payment at the Bar tho' these Words si peccatur tantum were omitted in the posterior Clause of the Retour which declared the Feu Duty and expressed the Irritancy for suffering two Terms to run in the third unpaid 18 Feb. 1600 E. Nos contra his Vassals. Where the Superior came to be expensed to a singular Successor who was publicly infest; it was sustained relevant to take off the Irritancy, and to hinder the Fee to be declared null & non solutum ca- nonem to the singular Successor, that the singular Successor had never intimated his

~~Intimation of his Succession to the Superior~~
 Right to the Vassal by Proof or otherwise and the Vassal continued Payment of his Feu Duty to the former Superior 22 November 1607 Wilson of Adwells contra Dunlop of Newbiggin. But such Payment to the former Superior would not free the Vassal from paying over again the Feu Duty to the singular Successor whose publick Infestment without Intimation was sufficient for that Effect.

The peculiar Casualty of Feu holding arising from the Nature of the Fee is that if no Part of the Feu Duty be paid for two whole Years he loses his Feu as if a Clause irritant were specially ingrossed in the Feu Infestment Act 246 Par. 15. §. 6. But yet the Lords of Session allow this Irritancy arising from the Nature of the Fee to be purged, and the Default to be healed at the Bar; the Irritancies expressed in Infestments are not so favourably dealt with 13 Feb. 1666 Wedderburn contra Woodlaw 26 July 1670 L. Poirie contra Hunter 16 Feb. 1665 Hepburn contra Nisbet which Distinction Sir George Mc Kenzie Observ. on d. Act 246 Par. 15. §. 6. thinks unreasonable, seeing the Statute declares such a Feu to be null for not Payment of the Feu Duty in the same Manner as if there were a Clause irritant contained in the In- festment, and the Lords ought not to put any other Sense upon it. The Failure of one of several Heirs (Portioners will not make the rest forfeit their Interest in the Fee Carpoz. jurispr. forens. Part 2. Const. 38. Def. 5. Some Lawyers are of Opinion, that a Vassal paying a Part of his Feu Duty doth not lose his Feu, tho' the whole be not paid Jul. Clar. Lib. 4. Sentent. §. Emptytuff's Quest. 8. N. 4. Carpoz. Jus. Def. 4. Craig Feud Lib. 2. Tit. 3. §. 15. Because his paying a Part when he hath not Money to pay the whole, is an Acknowledgment of