

Die last vest and seized in the lands or annual rents or others to be entered to hold on of him by such tenure, and that the person from whom the precept is nearest lawful heir to him in the land &c. of lawful age to enter, and therefore commands his heir to suffer him therein. When seigns given upon such a precept of Clare Constable can appear his not served, the Receiver becomes heir apparent and liable to all his predecessors debts, but his heirs only in the particular land annual rents or others contained in the precept. Nor will have right even to these, unless the precept and Justification was granted by the true superior. For his title will be of no avail to him in a competition with persons deriving right from another superior or to exclude him from seigns proceeding on a service and Return unless it be fortified with prescription or a justiciary judgment. 20 January 1623. Elphinstone contra Guthrie Craig Field. Lib. 20. Feb. 7 & 11 Hope idem. Hair lib. 3 Feb. 5 & 26. M. Tenore. Inf. lib. 20. Feb. 8 & 32. Such a simple precept of Clare Constable being only intended to substitute a person in the place of one deceased upon these terms and conditions as the former held the fee, any Exception, Variation or Reservation therein from the right will have no effect. Where the first investiture was given to heirs male, and the precept of Clare conceived in favour of heirs whatsoever or the former heirs what soever, and the latter to heirs male; the latter is preferred in the first investiture, will not lose the benefit of prescription by reason so many simple precepts of Clare Constable granted to other heirs from Hair lib. 2 Feb. 12 & 16.

Tit. 3.

Concerning seigns granted to heirs.

Seigns in favour of heirs must be Required in the same manner as original seigns upon Charters, or seigns upon Dispositions granted to singular successors; And the Distinction betwixt Rural lands and those within Burgh observed in both. And as seigns without Requisition in favour of singular successors are good against the grantor and his heirs, or any person obliged to acknowledge the Instrument (Clyde pag. 399) So are unrequited seigns in favour of heirs effectual against the predecessors their relatives. Thus deriving right from a son as heir to his father, was preferred to another whose right flowed from a Daughter as heir to the father passing by the Brothers. Albeit the brother's seign was not required. 30 June 1705 Keith of Ludgair contra Kinclair of the Keirs. So by a more slender title require their predecessors rather than singular successors do require from their heirs. But for about seigns Regularities is not sustained in favour of singular successors without some warrant or domicile and right or Immediate. Yet prescription upon Instruments of seigns

one or more continued and standing together on Returns or precepts of Clare Constable is a good title, without any admixture of their act. 12 Par. 22. Feb. 6. And the seigns upon Brigial Rights or Conveyances of governments within Burgh given by the town Clerk in favour of singular successors, will not be sustained without Admiration 21 June 1679. Mitchell contra Cowie 11 Feb. 1687. Brown contra Gorman. Yet seigns within Burgh are not given for serving heirs by heirs and staples lands. As to the Immemorial Custom and Privilege of the Burgh, doth sufficiently justify Cognation of the proximity of blood, and the giving of seigns. Hair lib. 2 Feb. 3 & 19.

Albeit when the Right of land Return Immediately of the King is said to his Majesty by any Especially of superiority by the property is upon the Consolidate with the superiority in supra pag. 68. Yet the superiority cannot have right to lands as heir to a subject, will not a special service. But the King being served and Return made is not to be subject upon the Return. For the Certainty of an Right is preferred in the case of the Sovereign's Acquisition, by receiving the Instrument of Resignation where the land is required to be Immediately of himself; And by the seign of the King's Donatory upon his resignation, presentation and registration thereof; the land be held of a subject. Hair lib. 2 Feb. 7 & 9. Giffen.

In what Cases heirs need not to enter for their lands, or their active titles, shall be explained after ward Chap. 8. Sect. 4. What hath been said concerning the making up and perfecting the active titles of heirs, leads me to speak of the manner how these titles are extinguished and Disposed.

Tit. 4.

How the Active titles of heirs may be Reduced.

As Return being a sentence can be taken away only by destruction Returns are easily Reduced and Annulled, because no person is necessarily cited as Defendant at Expanding the service of heirs, and the Request do Mostly Determine upon presumptions and their own private knowledge or the testimony of Witnesses where of no Record is made. Returns are ordinarily Reduced by a grand Inquest of 48 members or three ordinary Inquests, upon a summons of Error under the great Seal by a precept out of the Chancery. Which is the only summons that is now drawn in Latin, since summons came up place of Breves. A summons of error (where of the stile may be seen in Dallas System pag. 876.) Answers to a writ of error in England, and the proposition Error in France.