

No 29.

because the retour and extent of an annualrent is *quod valet seipsum*, and so the superior may bruik it.

Act. *McGill*.Alt. *Nicolson*.

Clerk, _____.

Fol. Dic. v. 2. p. 6. Durie, p. 564.

* * * Spottiswood reports this case :

IN an action pursued by Ogrie against David Murray of Hallmyres, the LORDS found, That Ogrie being served and retoured, and infeft as heir to his father in some lands holding of the defender, he had good action to pursue the defender, his superior, for the mails and duties of his lands, intromitted with by him, of all years and terms before the pursuer's retour, since his father's decease, in respect the defender had no declarator of non-entry against the pursuer.

Spottiswood, (NON-ENTRY.) p. 224.

No 30.

1631. July 19. EARL OF KINGHORN *against* STRANG.

A DECLARATOR of non-entry and comprising thereon was reduced, for this reason, that, before declarator, the feu-duty is only due, whereas the comprising had been deduced for the whole mails and duties.

Fol. Dic. v. 2. p. 6. Durie.

* * * This case is No 5. p. 96. *voce* ADJUDICATION.

1685. March 19.

MARTHA LOCKHART, and HARY DOUGLAS, her Husband, *against* The
EARL OF ROXBURGH.

No 31.

MARTHA LOCKHART, and Hary Douglas, her husband, against the Earl of Roxburgh, is reported by Castlehill; and Roxburgh's tutors claiming the by-gone annualrents for the non-entry of sundry years, during which they had lien out without seeking to be infeft, since Mr Robert Foulis, their author's death, who was last infeft, because in such cases *valet seipsum*;—THE LORDS found, though Roxburgh was superior of this annualrent, yet, seeing the heritable bond from Roxburgh bore an obligation to pay the annualrent, as well not infeft as infeft, this was equivalent to a discharge of the non-entry; and therefore found no non-entry due.

Fol. Dic. v. 2. p. 6. Fountainhall, v. 1. p. 355.