

No 7.

tue of his gift, zit nevertheles the last donatour sall be preferrit to him, gif he maid lauchful intimatioun to the tenentis of his gift, befor the executioun of the summoundis raisit at the instance of the first donatour.

*Fol. Dic. v. 1. p. 349. Balfour, (NON-ENTRY.) No 14. p. 260.*

1681. June 24.

OSWALD against CATHCART.

No 8.

A donatar pursuing for non-entries, a charge upon an apprising without the offer of a charter and an year's rent, was not sustained to exclude the non-entry duties.

JAMES OSWALD, as donatar to the non-entry of some tenements in Prestoun, pursues declarator thereon. It was *alleged* for Daniel Cathcart, That he had apprised the same tenements, and charged the superior to enter him; so that the superior being in the fault in not obeying the charge, he nor his assignee the donatar could not claim the advantage arising by his fault; likewise a charge is always equiparate to an infestment. The pursuer *answered*, That though a charge be sufficient to prevent posterior rights, yet it can never prejudice the superior of his casualties by his former vassal, who remains undennuded, seeing the charge would not make the appriser liable to these casualties; neither was the superior in the fault, unless the appriser had presented him a charter, and paid the bygone non-entry, and offered him a year's rent, either of the land, or the money in the apprising, as the Lords have oft-times sustained, both in the case of ward and non-entry.

THE LORDS found the charge did not exclude the superior, unless a charter and a year's rent had been offered, but found no necessity to offer the bygone non-entries.

*Stair, v. 2. p. 884.*

*See NON-ENTRY.*

*See APPENDIX.*