

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 infest 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 deduted 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 infest, since Mr Robert Foulis, their author's death, who was last infest, 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 infest as infest, 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.*

\*\*\* Harcarse reports this case :

No 31.

In a pursuit against a debtor for the annualrent of an heritable bond, whereupon infeftment had followed,

*Alleged* for the defender, That the lands out of which the annualrent is payable are in non-entry since the death of the last vassal, and the simple non-entry of annualrent *valet seipsum*, and must compensate the pursuer's claim.

*Answered* for the pursuer ; The annualrent is declared in the bond to be due and payable to the creditor, as well not infeft as infeft ; *2do*, The infeftment of annualrent being holden blench for a penny, nothing is due but the blench-duty before declarator.

*Replied* ; The clause for payment of the annualrent to the creditor, as well not infeft as infeft, takes only place before infeftment follow. But if the vassal lie out after infeftment, the land or annualrent ought to be in non-entry, and the non-entry duties will compensate the annualrent *quod valet seipsum*, even before declarator.

THE LORDS found, That the personal obligation to pay annualrent to the creditor, as well not infeft as infeft, took place, both after and before infeftment, and the pursuer might crave payment without entering or infefting himself in the annualrent ; and found, That the non-entry duty of this annualrent was only the blench-duty till declarator ; and resolved to decide so in all time coming. But here was no singular successor in the superiority, against whom the personal obligation to pay would militate.

*Harcarse, No 733. p. 208.*

1782. February 15. COLTART against TAIT and her Tenants.

THE lands of Nether Bar, part of the barony of New Abbey, had been feued out by the Crown, as coming in place of the monastery of that name, to the family of Gordon of Kenmore, and were by them sub-feued, in the year 1613, to the predecessors of Mrs Tait.

The superiority of these lands came by gift from the Crown into the person of Mr Coltart, who obtained decret against the present Kenmore, declaring them to be in non-entry. Mr Coltart afterwards instituted an action of special declarator against Mrs Tait and her Tenants, which concluded for the full rents of the lands.

Against this conclusion the defenders

*Pleaded* : Feu-holdings, in their original nature, are mere locations, differing from other leases only in the extent of their duration. The duties exigible by the superior are the rents, upon payment of which the feu-tenant is entitled to the possession, ' into whatsoever hands the lands may come ;' act 1449, c. 17.

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No 32.

In a case of subinfeudation, before the act 1633, the Lords found the superior entitled to the full rents and duties of the lands till a vassal was entered, and thereafter to the duties payable to him by his immediate vassal.