

No 17.

was merely *ex gratia*. 2d, Teinds were only a burden upon the property; and the rule had been, that vassals of subjects superior should pay a full year's rent without any deduction being specified on that account. 3d, As to the cess, the same answer applied as had been given with regard to the feu-duties.

4to, With regard to the victual; as this casualty was established to be a full year's rent of the lands as they then stood, the superior must take his chance whether the current prices were high or low. If the defenders chose to deliver the *ipsa corpora*, they would receive them; but if they rather inclined to pay the value, they could not complain, when both that and the quantity were referred to their oaths.

5to, A retrospect of seven years, as to the rent of the salmon-fishings and grass-grounds, was an indulgence, the current rent being the standard; and if the defenders were entitled to go back 20 years, they might, with the same reason, go back 40, or any period whatever.

THE COURT pronounced the following judgment: "Find there is no claim for the full mails and duties since the citation in this case; repel the defence founded on the act of council 1739, with respect to the *quantum* of the composition; but in ascertaining the extent of the year's rent, find that one-fifth part must be deducted from the rent of the lands, exclusive of the salmon-fishing, on account of tithes, in respect the pursuers are not superiors, nor have they right to the tithes: Find the cess to be no proper deduction; and that in converting the victual, the same must be rated according to the current prices of the markets in that part of the country; as to feu-duties, parties to give in mutual condescendences as to the practice; and as to the two last points (the salmon-fishings and grass), adhere. Thereafter, of consent of the pursuers, the feu-duties, in striking the composition, to be deducted from the rental."

Lord Ordinary, *Barjarg*.  
Clerk, *Campbell*.

For the Magistrates of Inverness, *Lockhart*.  
For Duff, and Others, *Cosmo Gordon*.

R. H.

*Fac. Col. No 67. p. 200.*


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S E C T. II.

Full mails not due till deplatator; unless the Superior be already in possession by ward.

No 18.  
In a declarator of non-entry, the Lords found,

1587. *March*.DRUMMOND *against* FORRESTER.

JOHN DRUMMOND having pursued one Forrester, as donatar to the King, of the non-entries of two-seventh parts of the lands of D., lying within the ba-

rony of Carnock, to hear and see the said lands to be decerned into non-entries by so many years, since the decease of A. B., it was *alleged*, That the said donatar could seek no more for the years bygone, but the retoured mails according to the daily practique. It was *answered*, That the decree being obtained, it behoved to be extended to all things that came under the gift of non-entries, and the gift gives right to the whole profits of the lands, likeas, the heir might have had if he had been entered. THE LORDS found by interlocutor, that before the decree, there could be no more sought but the retoured mails, because, before the decree, the tenants could not be warned to flit and remove.

No 18.  
that, before  
decree, the  
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because be-  
fore that, the  
tenants could  
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ed to remove.

*Fol. Dic. v. 2. p. 5. Colvil, MS. p. 424.*

1591.

• SMEITON *against* GOWRIE'S TENANTS.

IN an action pursued by Smeiton against the Earl of Gowrie's Tenants, to make forthcoming their farms and duties, which he had arrested in their hands, for some annualrents due to him out of Cowsland; *excepted* by the Lady Gowrie, tutrix testamentar, that they should not be made forthcoming to him, because she had obtained a gift of non-entry of these lands, by virtue whereof she was actually in possession of the uptaking of the mails and duties. *Replied*, That her gift of non-entry ought not to be respected, unless she would allege that she had obtained declarator thereupon. *Duplied*, That she needed no declarator being in possession. THE LORDS found, she behoved to have sought declarator upon her gift and so repelled the allegiance.

No 19.

*Spottiswood, (NON-ENTRY.) p. 218.*

1614. December 7.

BROWN *against* M'CULLOCH.

IN an action pursued by John Brown *contra* Thomas M'Culloch of Bartholm, for the farms of the lands of Brudslain, continually since the decease of his father; it was *alleged* by the defender, That the pursuer's sasine could not give action for the years before his infeftment, especially against the defender, who as superior had right to the farms by non-entry. THE LORDS repelled the allegiance, and found, that the superior could not have right to the farms without a declarator, and that he could not enter thereto *brevi manu*.

No 20.

*Fol. Dic. v. 2. p. 5. Kerse. MS. fol. 117.*