

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
retoured duty
only was due,
because be-
fore that, the
tenants could
not be warn-
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.