

No 21.

Found, that before declarator only the retoured duties are due to the superior.

1626. July 22.

LESLY *against* LESLY.

LESLY of that ilk pursued John Lesly of Pitcaple, his vassal, for payment of the duties of his lands during the time of the ward, and non-entry following the ward. *Excepted*, That during the non-entry after the ward, the superior had no right to the duties of the lands, but only to the old extent or retoured duty, because the superior before declarator can claim no more. *Replied*, That is only true in simple non-entries, but not in non-entries subsequent to a ward, which is of the nature of the preceding ward, and needs no declarator; for the ward is a non-entry necessary and legal, because the vassal cannot enter before he be major; the non-entry subsequent to the ward is voluntary upon the part of the vassal, who neglects to enter when he may do it. So as long as the vassal enters not after the expiring of the ward, the superior hath the like right to the mails, as he had during the ward, his possession never being interrupted. Nevertheless the LORDS found the exception relevant, seeing the superior was not in possession.

Fol. Dic. v. 2. p. 6. Spottiswood, (NON-ENTRY.) p. 217.

* * * Kerse reports this case :

THE LORDS found *ante declaratoriam* in non-entry, nothing to be paid but the retoured duty, and that it was sufficient to the vassal to say, that his superior was retoured, albeit he himself was never retoured. *Item*, They found, *idem* in non-entry after a ward, as in common non-entry, *et ante nunc nunquam decisum*.

Kerse, MS. fol. 117.

1631. July 19.

EARL OF KINGHORN *against* STRANG.

No 22.

THE superior before declarator has only right to the retoured duties, except three terms immediately subsequent to the ward; for which three terms the non-entry was found to be of the nature of the ward, and therefore that the superior might seek them without declarator of non-entry, just as he might do during the ward without any declarator.

Fol. Dic. v. 2. p. 5. Durie. Auchinleck.

* * * Durie's report of this case is No 5. p. 96, *voce* ADJUDICATION; and Auchinleck's No 2. p. 5113, *voce* GIFT OF NON-ENTRY.

* * * A similar decision was pronounced, 23d March 1622, Lesly *against* Lesly, No 9. p. 9289.