rator for mails and duties, from the date of citation upon the summons libelled, which was both a general and a special declarator; and found, that the vassals lying out to enter, and thereby having the benefit to be liable only for the retoured duties, ought to be decerned for the mails and duties after the citation, where the summons is a special declarator, or where the summons is both special and general. No 24.

Gosford, MS. No 325.

1673. *June* 12. FAA *against* LAIRD of POWRIE, and LORD BALMERINO.

No 25.
The right of non entry was found to carry the full duty from the date of citation in the general declarator.

ROBERT FAA being donatar to the non-entry, and other casualties of the superiority of certain lands belonging in property to the Lord Balmerino, and the Laird of Powrie by gift of the Lord Lindsay now superior in place of the Lord Spenzie his author, pursues declarator of non-entry, and concludes payment of the mails and duties. The defenders *alleged*, 1*mo*, That the declarator was not relevant for mails and duties, but only from the sentence in the general declarator, and for the retoured mails till then; 2*do*, The pursuers having right from the Lord Lindsay, doth not instruct a title; for the Lord Lindsay's sasine is null, not being registrated in the shire where the lands lie. It was *answered*, That in the sasine there is exprest an union of lands in several shires, and one place destined for sasine of the whole; so that the sasine being registrated in that shire where the lands lie, upon which sasine was to be taken for all, it is sufficient; 2*do*, The act for registration of sasines, doth not declare them simply null, but only in relation to those that have a better, though a posterior right. But the defenders have no right to the superiority or casualities thereof.

THE LORDS found the declarator of non-entry to extend to the mails and duties, from the citation whereupon the general declarator proceeded, and not from the sentence only; and found that the sasine was not null, as to the defenders who had no right, but not upon the account of the union, which they no occasion to determine in this case. *See* REGISTRATION.

Fol. Dic. v. 2. *p.* 5. *Stair*, v. 2. *p.* 187.

*** Gosford reports this case:

IN a declarator of non-entries, pursued at Robert Fraser's instance, as donator to the Lord Lindsay, who was infeft in the superiority of the lands of Muirhouse, against Powrie Fotheringham, who was infeft in the property by a disposition from the Lord Balmerino; it was alleged for the defender, that the Lord Lindsay's sasine could give him no right, because it was neither registrate in the sheriff court books, within which sheriffdom the lands did lie, nor in the

No 25. public register of sasines, and so was null *ipso jure*. It was answered, that the said lands being united with the Lord Lindsay's whole other lands lying into Fife, in one barony by a charter under the great seal, and a sasine to be taken at the manour place of Struthers, declared to be sufficient for the whole barony, which being accordingly done, and registered in the register of Fife, it was sufficient for the lands libelled. The LORDS did sustain the sasine, especially upon this reason, that the defender had no interest to propone that allegence, who had only the right of property, and that the act of Parliament 1617 is only made for security of those who should acquire right to any lands on reversions from the disponers thereof, that their condition and interest may be known, and not concealed; if any other thereafter should make a bargain, and require the same; whereas the defender pretended no right to the superiority. Thereafter it was alleged, there could be no declarator of non-entries for any year preceding the Lord Lindsay's infeftment, because they would fall under the executors of the Lord Spenzie, who stood infeft for the years libelled, before the Lord Lindsay's right, and so ought to be confirmed. It was answered, that a singular sucessor to a right of superiority had a good and undoubted right to all that are *jura realia*, which are inherent therein, and to the whole profits which can arise from them both, as to bygones, and in time coming; and such rights cannot belong to executors, not being moveable, but real rights, such as the right of marriage in ward lands, or of escheats by rebellion, where the profits thereof hath not been liquid and determined, and so made moveable in the time of the present superior, before he was denuded. It was *duplied*, That albeit the casualties falling to superiours, such as ward, and marriage, and escheat and others, be *jura realia*, yet where they are of that nature, that they resolve *in jura percipiendi fructus annuos*, or to uplift moveable sums, or debts; so many years rents as are outrun, and resting, for such moveable sums are due and settled in the person of the superior, will fall under his executry, and would not belong to his heir, far less to a singular successor, if they be not particularly disponed and assigned, and are not naturally included in a right of superiority, which only can be effectual in all time thereafter. This point being difficult, was ordained to be heard in *præsentia*; *vide*, 11th July 1673, No 20. p. 5449, *voce* HERETABLE and MOVEABLE.—*See* UNION.

Gosford MS. No 591. *p.* 337.

*** In the case 7th November 1701, Baird against Morison, No 43. p. 8545. *voce* MARRIAGE, AVAIL OF, it was likewise found, that full mails and duties are due from the time of the citation in the general declarators of non-entry, and not from sentence only.