

who, by the act of restitution in 1690, have right to claim an abatement of annualrents during the forfeiture, Blackbarony, the donatar, has intended, by this non-entry, to have got payment of these years' annualrents. Some of the Lords did not think the Act anent retouring annualrents declaratory, so as to cut off superiors for years preceding that law; which is not to be inferred except where it is expressed. *Vol. I. Page 555.*

1694. *July 13.*—Sir Archibald Murray of Blackbarony against Sir George Campbell of Cesnock, about the non-entry. The first question was, Whether the infeftment was holden of the king or not; seeing the confirmation did not bear whether it was *a me*, or *de me*; and Mr William Wallace's heirs had seemed to make their election, by taking a precept of *clare constat* from Cesnock: yet the Lords found it was held of the king; and so the non-entry was in his hands, because it bore *tenen. de nobis et successoribus nostris*. The second point was anent the receipt of the renunciation, which bore that they had renounced the said infeftment of annualrent, except as to the sum of 19,000 merks. A doubt arose, *1mo*. If this could be divided, so as not to acknowledge that sum resting. *2do*. If the real right was reserved, *pro tanto*, for security of that 19,000 merks, or if it was a total renunciation, and only a personal obligation for that sum.

The Lords resolved first to expiscate anent the existence of the said renunciation, and to examine Blackbarrony, his daughter-in-law, &c. about it; as also anent the transaction alleged made by Blackbarrony with the Earl of Melford for 23,000 merks. *Vol. I. Page 631.*

1696. *February 27.*—In the process, Sir Archibald Murray of Blackbarrony against Sir George Campbell of Cesnock, for a declarator of the non-entry of an infeftment of annualrent, which Mr William Wallace, his daughter-in-law's father, had in these lands:—ALLEGED,---There can be no declarator of non-entry, because the infeftment was extinct;—*1mo*. by extrinsic payment; *2do*. by a renunciation.---See *February 1671, Wishart against Arthur*. ANSWERED,---Extrinsic payment cannot extinguish in prejudice of the superior's casualty; and the renunciation was null, being granted by one not validly infeft.

The Lords sustained the declarator, but restricted it to serve allenary for a security to Blackbarrony of the sum of 19,000 merks, yet resting of that heritable bond; otherwise the Lords inclined to have repelled it. The non-entry of annualrents is now rectified by the Act 1690. *Vol. I. Page 716.*

[See another Case between thir Parties, 11th February 1697, Dictionary, page 970.]

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1696. *February 28.* SIR WILLIAM KER *against* SUNDRY ELDERS of KELSO.

SIR William Ker of Greenhead, as the Earl of Roxburgh's bailie of the barony of Kelso, having pursued sundry elders put in by Mr William Jack, minister there, for choosing and placing a reader and precentor to the church, without consent of the heritors, who had bestowed it on Mr James Kirkwood, the school-master; and, in respect of their contumacy, he having imprisoned them, they applied to the Lords by a bill of suspension and charge to set at liberty: And the Lords considering that such an affair was more ecclesiastic than civil, and that it exceeded the jurisdiction of a baron court, and seemed to be from pique and humour, they ordained the men to be presently set at liberty, without caution or consignment. *Vol. I. Page 716.*