

1696. February 25.

EARL OF CASSILIS *against* SIR THOMAS KENEDY, AND ROBERT BLACKWOOD.

THE LORDS advised the declarator pursued by the Earl of Cassilis, as superior of Dalmorton, a part of Kennedy of Girvanmain's, estate, holding ward of him, against Sir Thomas Kennedy, and Baillie Robert Blackwood, purchaser of that estate at a roup. The LORDS found, though the apparent heir's minority being expired, the ward ceased, yet the superior and his donatar being in possession by virtue of the ward, he had right to the full mails and duties of the lands till an offer was made, not only of a charter, but also of a year's rent, if a singular successor craved to enter; and that non-entry subsequent to the ward was of the nature of the ward; and though it was urged, that, by the current of decisions, he had only right to three terms, conform to Durie, 23d January 1630, Peibles, *voce* SUPERIOR & VASSAL; and Lesly, No 9. p. 9289. and Hope in his lesser Tractat, and Stair *lib. 2. tit. 4.* yet the plurality found he had right to the full rent, even beyond three terms, ay till he was interpellated, which is too great an extension of this causality. The next question was, if the superior could both exact a *relief* here, and also a composition from the creditors-adjudgers; and what the relief in such cases was? The LORDS found the relief was not a full year's rent, as Cassillis contended, but only the favourable rent, which was only the retoured duty, and that here he could not demand both; and there was only due a year's rent for receiving the adjudgers, and for changing his vassal, introduced by our statute 1469. See 9th February 1669, David French against the Duke of Hamilton and his donatar, for receiving him to the lands of Millburn, where it is determined what offers could legally stop the ward and non-entry, No 30. p. 6911., See RELIEF CASUALTY OF.

Fol. Dic. v. 2. p. 5. Fountainball, v. 1. p. 714.

No 26.

Found, that though an apparent heirs minority expired, the ward ceased, yet the superior and his donatar being in possession by virtue of the ward, he had full right to the mails and duties till an offer was made of a charter and a year's rent.

S E C T. III.

What are the Non-entry Duties before Declarator?

1554. December 19. DOUGLAS *against* FEUARS OF COLBURN.

ANENT the action moved by Mr Archibald Douglas, as donatar to the non-entries of Colburn, against the tenants feuars thereof, for the profits of the said

No 27.

Where lands hold feu, no more is due.