No. 22. and seised by hasp and staple; this bill was refused; for the Lords found no warrant for granting such letters that way, and infeftment being a custom and privilege within burgh, and answerable to an infeftment by a precept of *clare constat*, which no superior could be forced to grant, and there being an ordinary remedy by a special service, and thereupon to charge the Bailie to infeft.

Fol. Dic. v. 2. p. 407. Gosford MS. p. 12.

1678. *July* 18. FULLARTON *against* DENHOLMS.

No. 23.

Entering an heir by a precept of *clare constat* is *meræ voluntatis* of the superior, and what he is not bound to by law; and upon his refusal the heir must obtain himself retoured, and thereupon get precepts out of the Chancery requiring the superior to infeft him.

Fol. Dic. v. 2. p. 407.

*** This case is No. 13. p. 9293. *voce* NON-ENTRY.

1738. *December* 13. GORDON, Petitioner.

No. 24.
Letters of horning *de plano* against Magistrates disobeying a precept of infeftment.

The Bailies of the burgh of Annan having refused to obey the precept for infefting an heir in a burgage tenement, which, upon his service, he had obtained; upon his summary application to the Lords, warrant was granted for letters of horning, without any previous notice or intimation given to the Magistrates, the horning being considered as a charge against superiors, which the Magistrates might suspend if they saw cause.

Fol. Dic. v. 4. p. 312. Kilkerran, No. 1. p. 527.

SECT. VII.

Penalty on Superior for refusing to enter Vassals.—Superior possessing on Decree of Non-Entry.

1629. *December* 15. YOUNG *against* BAILIES of MONTROSE.

No. 25.

David Young being obliged to pay a sum, and in case of failing, to infeft his lands in an annual-rent therefore, out of his tenement in Montrose, and being