

*** Harcarse reports this case :

No 31.

In a pursuit against a debtor for the annualrent of an heritable bond, whereupon infeftment had followed,

Alleged for the defender, That the lands out of which the annualrent is payable are in non-entry since the death of the last vassal, and the simple non-entry of annualrent *valet seipsum*, and must compensate the pursuer's claim.

Answered for the pursuer ; The annualrent is declared in the bond to be due and payable to the creditor, as well not infeft as infeft ; *2do*, The infeftment of annualrent being holden blench for a penny, nothing is due but the blench-duty before declarator.

Replied ; The clause for payment of the annualrent to the creditor, as well not infeft as infeft, takes only place before infeftment follow. But if the vassal lie out after infeftment, the land or annualrent ought to be in non-entry, and the non-entry duties will compensate the annualrent *quod valet seipsum*, even before declarator.

THE LORDS found, That the personal obligation to pay annualrent to the creditor, as well not infeft as infeft, took place, both after and before infeftment, and the pursuer might crave payment without entering or infefting himself in the annualrent ; and found, That the non-entry duty of this annualrent was only the blench-duty till declarator ; and resolved to decide so in all time coming. But here was no singular successor in the superiority, against whom the personal obligation to pay would militate.

Harcarse, No 733. p. 208.

1782. February 15. COLTART against TAIT and her Tenants.

THE lands of Nether Bar, part of the barony of New Abbey, had been feued out by the Crown, as coming in place of the monastery of that name, to the family of Gordon of Kenmore, and were by them sub-feued, in the year 1613, to the predecessors of Mrs Tait.

The superiority of these lands came by gift from the Crown into the person of Mr Coltart, who obtained decret against the present Kenmore, declaring them to be in non-entry. Mr Coltart afterwards instituted an action of special declarator against Mrs Tait and her Tenants, which concluded for the full rents of the lands.

Against this conclusion the defenders

Pleaded : Feu-holdings, in their original nature, are mere locations, differing from other leases only in the extent of their duration. The duties exigible by the superior are the rents, upon payment of which the feu-tenant is entitled to the possession, ' into whatsoever hands the lands may come ;' act 1449, c. 17.

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No 32.

In a case of subinfeudation, before the act 1633, the Lords found the superior entitled to the full rents and duties of the lands till a vassal was entered, and thereafter to the duties payable to him by his immediate vassal.

No 32.

2do, By statute 1457, c. 71. and 1503, c. 9. it is declared lawful for all persons to set their lands in feu-farm; and that in case of the granter of such feu-rights falling in ward, or incurring any feudal delinquency, the sub-vassal shall only be liable in the same sub-feu farms or duties which he was bound to pay to his immediate superior. These statutes were in force when the defender's original feu-right was granted; and, of course, all that can be exacted from them is the sub-feu duties stipulated in their investitures.

Answered; Leases do not afford any exception against the superior having obtained decret of non-entry; and feu-rights, from their assimilation to leases, cannot have a stronger effect.

2do, The statutes quoted relate only to ward-lands, and expressly except 'feus granted with diminution of the rental.' Nor do these statutes extend to the ordinary casualties attending feudal contracts. From the indispensable qualities of these contracts, the superior must have it in his power, upon the demise of his vassal, to pursue a declarator of non-entry, and thereby to enter to the full possession of the lands. The sub-vassals may, indeed, by proper steps, in-state themselves in the right of their immediate superior; but, by doing so, they come under every obligation to which this superior was subject.

THE LORDS found the pursuer entitled to the full rents and duties of the lands till a vassal was entered; and thereafter to the duties payable to him by his immediate vassal; but, in regard of the circumstances of the case, and unfavourable nature of the claim to the full rents, found these due only from the date of this interlocutor.

Lord Ordinary. *Alva.* Act. R. Dundas. Alt. Rae, Maclaurin, Blair. Clerk, Campbell, C. *Fol. Dic. v. 4. p. 20. Fac. Col. No 32. p. 53.*

 SECT. IV.

Full Mails not due from Citation, where the Defender has a colourable Excuse.

No 33.

No non-entry was found due where the vassal was taken prison-

1554. March 19.

ROLLAND against His VASSAL.

ANENT the action pursued by the Laird of Rolland against his free tenant, for non-entries of his lands holden of him, it was *alleged* by the said tenant, That the said Laird's father was slain at Pinkie, by reason of the which the said