

marriage have been unprofitable, yet a non-entry taken after that manner will not subsist as if it were taken originally.

No 4.

*Fol. Dic. v. 1. p. 350. Haddington, MS. No 1798.*

\* \* \* Kerse reports the same case :

IN an action of declarator of non-entry pursued by John Livingston for the lands of Dunwiddie, *contra* Archibald Maxwell of Cowhill, it was found, that a gift of ward and non-entry granted to John Livingston of Abercorn, to the decease of Sir Robert Maxwell of Dunwiddie, could be no further extended but to the non-entry of the terms after the majority of John Maxwell, apparent heir of the said lands.

This same was decided of before betwixt the Duke of Albany, now Duke of York, and the Earl of Morton, concerning the non-entry of the ward of the living of Buchan.

*Kerse, MS. fol. 116.*

1611. July. L. OF COLDENKNOWS *against* L. CORSBIE.

LANDS being in non-entries, a gift of ward, marriage, and non-entries, will not serve for the non-entries any longer nor three terms after the expiring of the ward. And a particular gift of non-entries subjoined in the said gift of ward, marriage and non-entries, for the donatar's bruiking the said gift of non-entries, after the expiring of the ward, will not be sustained. An infeftment of lands with a clause *de novodamus, ratione foris-facturæ, non-intritus, &c.* will not purge the bygone non-entries; because *hoc non agebatur* to prejudge the King of his casualty of the non-entries, but only to grant an heritable right *ad futura*. Laird of Coldenknows for the ward of Corsbie in Exchequer, and resolved by the Lords of Session.

No 5.  
Found in conformity with the above.

*Fol. Dic. v. 1. p. 350. Haddington, MS. No 2287.*

1632. February 10. MAXWELL *against* M'GIE.

A GIFT of non-entry subsequent to a ward, gives no interest to the mails and duties, but for three terms after the expiring of the ward; but a new gift must be taken of the non-entry, and a new declarator must be obtained thereupon, as well by him that is donatar to the King, as he who is to a mediate superior.

No 6.

*Fol. Dic. v. 1. p. 350. Auchinleck, MS. p. 141.*