

- 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 mera 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* BAILLIES 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

charged and denounced for not fulfilling of the bond; thereafter the creditor pursues the said debtor, and the Bailies of Montrose, viz. the debtor to give him infestment, and if he do not, the Bailies to infest him; and the party being absent in the process, it was found, that the order could not be sustained against the Bailies, and that the act of Parliament of tinsel of superiority of those who enters not thereto, being charged to that effect by vassals, as the act prescribes, militates not to produce this action.

Clerk, *Gibson.*

Durie, p. 474.

No. 25.

1632. *March 24.*

HAY *against* L. ACHNAMES.

James Hay seeking declarator of Achnames's life-rent of escheat of the lands of _____ holden of the said James; and Achnames alleging, that no life-rent can fall to James Hay, because he was infest in these lands, holden of the Prince upon James Hay's contumacy, for refusing to infest him, so that the benefit of the life-rent thereby cannot belong to him; this allegiance was repelled, for the infestment granted by the Prince, for the immediate superior's disobedience, or refusal to receive his vassal, was found a good and lawful reason to exclude all non-entry, which the superior might seek for the vassal's non-entry, seeing the superior was charged, and refused; and the entry by the Prince was found to purge the same, and to supply that defect; but it was found nowise to exclude the immediate superior from any other casualties of his superiority, which otherwise might belong to him as ward, life-rent, recognition, and others; and also the duties, if any were payable by the tenor of the infestment, are due to the superior, notwithstanding of the vassal's entry by the prince; for these casualties accresce to the superior for the fault of the vassal's self, wherein the superior cannot be hurt *sine sua culpa*, but in the non-entry he is prejudged for his own fault, for therein habet seipsum auctorem culpæ, et non vassallum, et in aliis vassallus est auctor culpæ, et delictorum, et non dominus.

Act. *Gilmore.*

Alt.

Clerk, *Hay.*

Fol. Dic. v. 2. p. 408. Durie, p. 633.

1749. *June 21.*

JAMES COOK *against* DICK of Grange.

Dick of Grange obtained a decret of non-entry of certain lands feued by him, whereupon houses had been built, which was reduced at the instance of James Cook, an adjudger, and he found liable to account; and in the accounting, the Lord Ordinary, 23d July, 1748, "sustained a claim of annual-rent of money advanced by Grange, for the repairs and meliorations of the subjects in controversy,

No. 26.

Penalty for refusing to enter vassals.

No. 27.

A superior possessing on a decree of non-entry, which was afterwards reduced, it