No 3.
A donatar to ward lands may enter to the possession of the ward lands, actually possessed by the defunct, without declarator; but it was found ejection to dispossess the tenants before declarator.

1595. *July* 4.
ROBERT FLETCHER *against* EARL of ATHOLE, Tutor to the EARL of MURRAY.

ROBERT FLETCHER, burgess of Dundee, pursued the Earl of Athole as tutor to the Earl of Murray, for ejecting of him furth of the fishings of Spey, set to him in tack be the umquhile Earl of Murray.—It was *alleged*, That the defender did na wrang, and should be assoilzied, because the King's Majesty having disponed to him the waird and marriage of the Earl of Murray; and sua, being donatar to the waird, was not obliged to respect ony tacks of that whereof the defunct was in possession.—It was *answered*, That the allegeance should be repelled; and the LORDS fand, That the donatar to ane ward may enter to the possession of ony lands actually possessed be the defunct's self, without declarator, but in things possessed be sub-tenants, declarator was always necessar.

Fol. Dic. v. 1. *p.* 228. *Haddington, MS. No* 570.

A. *against* B.

No 4.

DECLARATOR of non-entry was found unnecessary where the gift was in favour of the heritor himself. *See* APPENDIX.

Fol. Dic. v. 1. *p.* 228. *Haddington, MS.*

No 5.
An adjudication was found null, being founded upon a gift of non-entry without declarator; for non-entry must be declared, in order to make it become a liquid debt.

1678. *July* 19. POURIE FOTHRINGHAM *against* The MARQUIS of DOUGLAS.

IN Pourie Fothringham and the Marquis of Douglas's case, an adjudication was found invalid, because the ground of it was a gift of non-entry, which ought first to have been declared, before it was a liquid debt, and it was still undeclared. THE LORDS found the adjudication null, but restricted it to the sums contained in the bonds whereupon it was led; 2*do*, In Pourie's cause against Hunter of Burnside, 'they found where a clause irritant, (resolving the feu on cessation *per triennium* to pay the feu-duty,) is in a charter, and a reduction is raised by the superior for annulling the feu, for [the vassal's] not paying the feu-duty by the space of three years, that the said failzie cannot be purged at the bar; but if the feu or other charter want that resolutive irritant clause, and the declarator only concludes amission of the feu, upon the 246th act of Parl. 1597, as inherent *de jure, et ex natura rei*, the LORDS declared they will find that *mora* purgeable at the bar, any time *ante sententiam in delaratoria obtentam*.'

Fol. Dic. v. 1. *p.* 228. *Fountainhall, MS.* & *v.* 1. *p.* 10.