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more before sentence but the retoured mails; and further, he is content instantly to take a precept of *clare constat*, and to pay the reasonable expenses of his service and retour. THE LORDS found, that the superior should have the mails and duties after the raising the summons of declarator, and that they would decide so in all time coming in the like cases.

Newbyth, MS. p. 80.

1671. *January 30.*

DOUGLAS of Kelhead *against* The VASSALS of the Barony of Kelhead, and Others.

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Found in
conformity
with Harper
against Ha-
milton, *supra*.

THE Earl of Queensberry being superior to certain vassals of the barony of Kelhead, who did dispoise the feu-duties and whole casualties of the superiority to Kelhead his brother, to the effect that Kelhead might be his immediate vassal, and that the feuers might hold of Kelhead; whereupon Kelhead was infeft holding of Queensberry, and thereupon pursues a declarator of non-entry, both generally and specially in the said summons; it was *alleged* for the defenders absolvitor, because they were not the pursuer's vassals, for albeit he was infeft holding of Queensberry, to the effect he might become their superior, yet that infeftment was null, because no superior could interpose any person betwixt him and his immediate vassal; likeas, the non-entry could only infer the feu-duty till decret or declarator were pronounced, which used to be *per se*, but here both special and general declarator being joint, could only conclude the feu-duties for bygones till litiscontestation.

THE LORDS found that albeit the pursuer's title upon his infeftment, by which he was interposed was invalid; yet seeing it contained a disposition and assignation to the feu-duties, and casualties of the superiority, that the pursuer had sufficient title thereby, as donatar by Queensberry the superior; and found that the non-entry carried only the feu-duty before the citation, but after the citation the whole profits, seeing the vassals did not upon the citation, obtain themselves infeft by Queensberry. *See SUPERIOR AND VASSAL. See No 12. p. 9292. & No 36. p. 9318.*

Fol. Dic. v. 2. p. 5. Stair, v. 1. p. 710.

* * * Gosford reports this case :

1671. *January 29*—IN the action of declarator, (*see* No 12. p. 9292.) at Kelhead's instance against his Vassals, it was *alleged*, That the special declarator for the mails and duties could not be sustained, but from the date of the act of litiscontestation; seeing there was no decret of general declarator, and that it was found that the pursuer had no right as superior, but as assignee, to the bygone non-entries. THE LORDS, notwithstanding, did sustain the special decla-

rator for mails and duties, from the date of citation upon the summons libelled, which was both a general and a special declarator; and found, that the vassals lying out to enter, and thereby having the benefit to be liable only for the retoured duties, ought to be decerned for the mails and duties after the citation, where the summons is a special declarator, or where the summons is both special and general.

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Gosford, MS. No 325.

1673. June 12. FAA against LAIRD of POWRIE, and LORD BALMERINO.

ROBERT FAA being donatar to the non-entry, and other casualties of the superiority of certain lands belonging in property to the Lord Balmerino, and the Laird of Powrie by gift of the Lord Lindsay now superior in place of the Lord Spenziè his author, pursues declarator of non-entry, and concludes payment of the mails and duties. The defenders *alleged, 1^{mo}*, That the declarator was not relevant for mails and duties, but only from the sentence in the general declarator, and for the retoured mails till then; *2^{do}*, The pursuers having right from the Lord Lindsay, doth not instruct a title; for the Lord Lindsay's sasine is null, not being registrated in the shire where the lands lie. It was *answered*, That in the sasine there is exprest an union of lands in several shires, and one place destined for sasine of the whole; so that the sasine being registrated in that shire where the lands lie, upon which sasine was to be taken for all, it is sufficient; *2^{do}*, The act for registration of sasines, doth not declare them simply null, but only in relation to those that have a better, though a posterior right. But the defenders have no right to the superiority or casualties thereof.

THE LORDS found the declarator of non-entry to extend to the mails and duties, from the citation whereupon the general declarator proceeded, and not from the sentence only; and found that the sasine was not null, as to the defenders who had no right, but not upon the account of the union, which they no occasion to determine in this case. See REGISTRATION.

Fol. Dic. v. 2. p. 5. Stair, v. 2. p. 187.

*** Gosford reports this case:

IN a declarator of non-entries, pursued at Robert Fraser's instance, as donator to the Lord Lindsay, who was infeft in the superiority of the lands of Mairhouse, against Powrie Fotheringham, who was infeft in the property by a disposition from the Lord Balmerino; it was alleged for the defender, that the Lord Lindsay's sasine could give him no right, because it was neither registrate in the sheriff court books, within which sheriffdom the lands did lie, nor in the

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The right of non entry was found to carry the full duty from the date of citation in the general declarator.