

No 46.

1593. *March 4.* EARL OF CRAWFORD *against* BALMUBY.

IN the action of non-entry pursued by the Earl of Crawford against the Laird of Balmuby, the LORDS found, that an exception, that filling of lands by the space of 36 years, elides the said pursuit;—and the LORDS decerned that they would observe that as a practice in all actions of non-entries; and that it is sufficient to allege, that the lands have been full by the space of 36 years immediately preceding the time of litiscontestation in the said pursuit of non-entries.

*Fol. Dic. v. 2. p. 7. Haddington, MS. No 384.*

No 47.

1613. *June 14.* ARTHUR *against* LAIRD OF BLEKO.

IN an action betwixt Mr John Arthur and the Laird of Bleko, the LORDS sustained a sasine upon a retour granted by the heir of the old superior, who was denuded, to purge the non-entry, notwithstanding it was offered to be proved, that long before the space of four ages the superior was denuded.

*Item*, it was found in that case, that the lands being full 40 years by a sasine, it purged all the preceding non-entry.

*Fol. Dic. v. 2. p. 7. Kerse, MS. fol. 117.*

1629. *March 19.*DOUGLAS and E. ANGUS *against* E. LAUDERDALE, and L. LEY.

No 48.

Though it is a good defence against all preceding non-entries, that the lands have been full for the space of 40 years, yet this was repelled as *jus tertii*, when proponed by a party who had no right to the infeftment, by which the lands were alleged to be full.

A DECLARATOR of non-entry of lands being sought, and one of the defenders compearing, and alleging that Lauderdale was infeft in these lands, and that he and his author immediately before him were infeft therein, by rights and infeftments these 40 years by-past, whereby the land was full that space, and which by the practise of the kingdom purged all non-entry; this exception was repelled, being proponed by the defender, who alleged no right to the lands flowing from the Earl of Lauderdale, by whose right the lands were alleged to be full; and so it was *jus tertii*, and not competent to the proponer; whereas if he either had right from the Lo. Lauderdale, or that the Lo. Lauderdale's self had proponed it, the same would have been found relevant; for a defender, excepting upon his own right, or his author's, that the lands was full in their person by the space of 40 years, it is enough to purge all preceding non-entry; but the Lo. Lauderdale not being compearing (being a party called) to propone this, as said is, it was repelled *ut supra*, as not competent to the proponer; for in effect the non-entry was pursued to the behoof of the Lo. Lauderdale, to