1630. *December* 15. YESTER *against* VASSALS.

No. 4.

In a declarator of non-entry pursued by the Lord Yester against one of his vassals, the libel bore, that he being infeft in the barony of F. whereof the lands were a proper part and pertinent holding of him, &c. the Lords found, That, for proving of his summons, the pursuer's sasine did suffice; which bore him to be infeft only in the said barony of F. generally, without mentioning that he was seised in the said lands of N. and that he needed not prove the said lands of N. to be parts and pertinents of the said barony of F.; but they thought the defender should disclaim him, if these lands of N. were not a part of the said barony of F. holding of the pursuer.

Spottiswood, (NON-ENTRY) *p.* 224.

1667. *June* 28. MR. JAMES DOWGLAS *against* WILLIAM LEISK.

No. 5.

An apprising with a charge denudes not the vassal, nor hinders his life-rent escheat to fall.

Mr. James Dowglas, as donatar to the life-rent escheat of William Leisk, pursues a special declarator against the tenants for mails and duties. It was alleged for William Leisk, That the lands in question were apprized from William Leisk, the rebel, and the superior, granter of this gift, charged to infeft the appriser long before the rebellion; to which apprizing William Leisk has right, during his life; so that the charge being equivalent to an infeftment as to the time, and to the anteriority of the infeftment, and by drawing it back to the charge, doth prefer the apprizer from the time of the charge. It was alleged for the donatar, That albeit a charge against the superior be equivalent to an infeftment in some cases, yet in other things it is not equivalent, as it is not a right sufficient for the apprizer to remove tenants; and therefore the vassal is not denuded thereby; otherwise, the superior could have no casuality after such a charge, because the apprizer not being infeft, his life-rent could not fall. It was answered for the defender, That albeit this consequence should follow, it is the superior's own fault, that did not receive the apprizer. It was answered, *Non constat*, it was his fault, for he might have just reason to suspend; and albeit it were his fault, the law hath not determined this to be his penalty, to lose his casualities.

The Lords repelled the defence, and found the charge on the apprising did not denude the former vassal, but his life-rent fell, and affected the ground.

Stair, *v.* 1. *p.* 465.

1669. *February* 9. BLACK *against* FRENCH.

No. 6.

Apprising with a charge against the superior does not state the appriser as vassal; and the apprising being of ward-lands, the ward was found to fall by the