

all ward : For the LORDS found that there was a great disparity betwixt these cases, seeing a liferent escheat did only belong to the superior by the law, upon the vassal's rebellion, which was not so favourable, against a lawful creditor doing diligence ; but the right of ward did belong to him by the *reddendo* of the vassal's charter, which could not be taken from him, unless he had received a new vassal, or that complete diligence had been done against him, at least that the compriser had offered *quod de jure facere tenetur*, without which he was not obliged to infest him. Likeas in this case there was this specialty, that the Duke did offer to the messenger to infest, being paid of a year's duty, and thereupon took instruments ; and to the preference of the first compriser who had charged, to the second, who was infest, they found the reason to be that it ought not to be in the power of the superior to prefer one creditor to another, seeing by collusion he might do the same, which did not meet the foresaid case.

*Gosford, MS. No 111. p. 40.*

No 30.

1681. February 3.

KERR against HENDERSON.

HARRY KERR as donatar by the Earl of Roxburgh, of the nonentry of some lands holden of the Earl of Roxburgh by Henderson, pursues declarator. The defender *alleged* absolvitor, because he is an appriser, and hath charged the superior to enter him upon an apprising before this pursuit. It was *answered*, *Non relevat*, unless he had offered to the superior a year's rent, with a draught of a charter to be signed, as was found in the case of Black donatar to the Duke of Hamilton against Hamilton of Milnburn, No 30. p. 6511, in the case of ward, which is a much heavier burden than the non entry, which reaches only the retour-duties by this declarator.

THE LORDS found the charge alone, without offering a year's rent, either of land or money, did not exclude the nonentry.

*Fol. Dic. v. 1. p. 471. Stair, v. 2. p. 852.*

\* \* \* Fountainhall reports the same case :

HENRY KER against Alexander Henderson, a pursuit of nonentry. *Alleged*, He bruiked by a comprising on which he had charged the superior. THE LORDS found the charge did not stop the non-entry except a year's rent had been offered to the superior.

*Fountainball, MS.*

\* \* \* The like was decided 26th June 1681, Oswald against Cathcart, No 8. p. 5116. *voce* GIFT OF NONENTRY.

No 31.  
Found in conformity with the above.