

No 14.

creditors, equivalent to his entry, and thereupon they did subscribe a charter; and Mr John Elies having written to the Duke, pretending that he would suffer great prejudice if he were not infest, the Duke did write the foresaid letter, and did consent that he should be infest, but the charter was to lie in Robert Hamilton's hand, who was the Duke's ordinary writer, before the defender should procure the composition to the Duke from these English creditors; and the defender not having performed his engagement in getting the compositions to the Duke from English creditors, the Duke did justly cancel the charter.—THE LORDS repelled the first defence; and, before answer to the second, ordained Robert Hamilton to depone if the charter was delivered to him for the behoof of the defender, or on what terms the same was delivered to him, or if he did ever deliver the same to the defender, or back to the pursuer,

*Sir P. Home, MS. v. I. No 531.*

No 15.

1687. *July.* LAIRD OF POWRIE *against* MARGARET SMITH, &c.

IN a declarator of non-entry against a compriser, it was *alleged* for the defender, That he had charged the pursuer to enter him, and he suspended; and the land must be reputed full since the charge.

*Answered*; The defender ought to have offered a charter, with the bygone feu-duties, and a year's rent as a composition.

THE LORDS found the answer relevant.

*Fol. Dic. v. 2. p. 5. Harcarse, (NON-ENTRY.) No 736. p. 209.*

1713. *July 24.*

THE UNIVERSITY OF GLASGOW *against* JAMES HAMILTON of Dalziel.

No 16.

An adjudger having charged the superior to infest him, and made offer of a charter with a year's rent, this was found to put the superior *in mora*, and to make him liable for the full rents, he being in possession by a declarator of non-entry.

THE University of Glasgow having acquired from Bessie Herbertson an adjudication, led at her instance against Mungo Nisbet, of the lands of Shiels, charged Dalziel, superior of the lands, (who was in possession by a declarator of non-entry,) to enter them, and offered him a charter with a year's rent; and, upon his refusal, pursued a mails and duties against the tenants. In which process the superior compearing, *alleged*, That he was not obliged to receive the University for a vassal; because, through that community's not dying, he should be deprived of the casualties of non-entry, escheat, &c. arising from the death or delinquency of a private vassal, which cannot be taken from any superior, without his own consent, by the single deed of his vassal.

*Answered* for the University, The act 36th of King James III. 5th Parliament, ordains the overlord to receive a creditor, or any other buyer, tenant to him, paying to the overlord a year's mail, as the land is set for the time; and,