

No 3.

1728. July 23. VISCOUNT of ARBUTHNOT *against* RAIT.

A SUPERIOR having granted to his feu-vassal a gift of the non-entry duties the same was found not to comprehend the feu-duties that fell due during the non-entry, and therefore the superior's action for these feu-duties was sustained. See APPENDIX.

Fol. Dic. v. 1. p. 349.

SECT. II.

Competition between Gifts of Non-entry.

1541. July 28. EDWARD STEWART *against* The LAIRD of LUSS.

No 4.
The first donatar of ward, non-entry, &c. having executed a summons against a second donatar, was preferred to him, altho' the second had obtained first possession.

GIF the King gevis and disponis to divers and sindrie donatouris, divers and sindrie giftis of non-entres, ward, or uther casualtie pertening to his Hienes, and the first donatour raisis summoundis be vertue of his gift, aganis the last donatour, and causis the samin be execute upon him befor he obtain his gift; he, be ressoun he prevenis him be summoundis, aucht and sould be preferrit to him, notwithstanding that the last donatour obtenit first possessioun, and be thairintill.

Fol. Dic. v. 1. p. 349. Balfour, (FRAUDFUL ALIENATION.) No 5. p. 166.

No 5.

1563. July 9. The MASTER of ERROL *against* N. KEITH.

GIF ony man obtenis ane gift of non-entres, and be vertue thairof raisis summoundis aganis the heritabill possessouris of the samin landis, and thairefter, *pendente lite*, deceissis, his air is preferrit to all uther persounis obtenand ane uther gift of non-entres of the samin landis, efter the dait of the gift foirsaid.

Balfour, (NON-ENTRY.) No 9. p. 258.

No 6.

1566. February 14. ROLLOCK *against* DINGWALL.

Two gifts of non-entry were made

ANENT the action persewed be Robert Rollock of Fowlis against Thomas Dingwall of Killdrum, anent the gift of non-entries of certain lands pertaining

in heritage to the defender, given be our Sovereign Lady; it was *alleged* be the persewar, That the said lands had been in non-entries be certain years in our Sovereign Lady's hands, whilk non-entries were disponit to the said persewar, who desirrit the same to be decernit in non-entries conform to his gift. It was *alleged* be the said defendar, That the said lands pertened to him heretable, and if so had been that the said lands had been in non-entries, as is lybellit, yet he had obtained ane gift of our Sovereign Lady of the non-entries of all the said lands, the space that the said lands had been in non-entries before the date of the said gift, and ay and while the entrie of the righteous air thairto, and had been in possession of the said lands, be manuring, and uptaking the mails and duties of the same, long before the date of his gift, or the time of the same. It was *answered* be the persewar, That his gift was made to him two years before the date of the defender's gift; and *alleged*, that *donatio principis transfert dominium* incontinent after the date of the said gift, without any other and real possession, as was *alleged* could not serve without there had been ane decret of non-entries decerned, be the whilk he came in possession. It was *alleged* be the said defendar, That albeit the persewar's gift was befor his, notwithstanding it was never intimated to him, nor summons raisit thairupon, sua that the said defender was not obliged to know the same; also, he needit no decret to decern the said lands in non-entries in his favours, because the heritable right of the same lands pertentit to himself, and he could not call himself to that effect; but the real possession of the same was enough to him, conform to his gift, notwithstanding the naked gift was given to the said persewar before his, without real possession following thereupon; whilk allegiance for the defender was admittit be the LORDS, and obtained an absolvitor of the said non-entries be decret of the LORDS, notwithstanding the allegiance of the persewar.

Fol. Dic. v. i. p. 349. Maitland, MS. p. 173.

* * * Balfour reports the same case:

THE heritabill possessour of landis being in possessioun thairto, and obtenand the gift of non-entres, aucht and sould be preferrit to all uther persounis obtenand ane uther gift of non-entres of the samin landis, ather after his gift or befor the samin, gif the time of the obtaining of his gift he was in *bona fide*, and na intimatioun of ane priour gift maid to him, or ony summoundis raisit aganis him conform thairto.

Balfour, (NON-ENTRY.) No 11. p. 259.

1568. April 2. ARCHIBALD LOCKHART *against* JA. LOCKHART.

GIF divers giftis of non-entres of the samin landis be disponit to sindrie persounis, and the first donatour raisis first summoundis aganis the tenentis be ver-

No 6.

by the Sovereign, one to a stranger, and a posterior one to the vassal's heir himself, who accordingly was in possession. In a declarator at the instance of the prior donatar, the Lords preferred the second donatar, though his gift was never declared.

No 7.