

- No 13. rator of his lands, because he is infeft therein by the King with a gift *de novo damus*, including all non-entries, &c. and must stop his declarator, especially seeing he offers to prove, thar, since the date of his infeftment, he has been in continual possession thereof. *Replied*, Not relevant to purge any non-entry posterior to the said gift *de novo damus*, though it will take away all before, for the King could give no more than was vacant in his own hand the time of the said gift, and therefore he may gift any posterior non-entry, falling by the decease of any vassal after the infeftment, and the same gift ought to be declared. THE LORDS found this exception relevant. After this the pursuer *protested*, That in respect that his declarator of these last lands is stopped by proponing of this allegiance, he might have the benefit to reduce the rights whereupon this allegiance is founded, and to pursue for the mails and duties of the lands, and to make warning, sicklike as if his gift had been declared. Which protestation the LORDS admitted. See NON-ENTRY.

*Fol. Dic. v. 1. p. 517. Spottiswood, (NON-ENTRY.) p. 222.*

1629. July 27.

LADY CATHCART *against* LAIRD OF CROSSCRAWFORD.

No 14.

IF a Lady be infeft in the annualrent of ward-lands and her infeftment confirmed by the superior, after the decease of her spouse, if she shall take a gift of the ward-land and misken her own infeftment, by virtue of her gift pursue removing of her husband's vassals during the time of the ward; the LORDS will find she can not quarrel her vassal's rights of the said lands, or any part of them, wherein she stood infeft and confirmed by the superior.

*Fol. Dic. v. 1. p. 516. Auchinleck, MS. p. 247.*

1630. July 14. HAY *against* The EARL of MARISHALL.

No 15.

A MAGISTRATE being charged (even by the first charge) to apprehend a rebel, if he after that have communication with him at any time within year and day, after the charge, and do not apprehend him, he will be liable for the debt owing by the rebel. But attour year and day this will not be sustained upon an old charge.

*Fol. Dic. v. 1. p. 516. Spottiswood, (CAPTION.) p. 32.*

\* \* Durie reports this case :

THE Earl of Marshall, as Sheriff of the Mearns, being pursued by a creditor to pay the debt for not taking of the rebel, he being charged to take him.