

1611, § 21. It is not concluded against the busful personally to pay the said duties, as  
 is a complete action partly declaratory and partly for providing the ground. And an  
 if the Superior do possess without such a preceding Declarator, he is ac-  
 countable to the Vassal for the Mails and Dutys 3 Feb. 1681' Came contra  
 =ray, Hair Jhd. § 22. But a Superior in Possession by the Word of his  
 =all, may continue his Possession without Declarator for three years  
 =sequent to the Word, upon the account of Nonentry of the Vassal do not  
 sooner 28 March 1622 L. Leslie contra <sup>Hays Min. Jhd. § 23</sup> L. Pitcairli Hair Jhd. § 23. The  
 Superior or his Donatary not being in Possession by the Word, must  
 declare the Nonentry.

The Style of a Summons of general Declarator of Nonentry runs  
 thus. Our Will is and we charge you that ye lawfully summon warn and  
 charge C. Heir to B. of ec. and also O. P. L. R. Tenants and Possessors  
 of the said Lands to compare ec. to answer at the instance of A. Donatary  
 of the Nonentry of the said Defender, by a Gift of Nonentry granted by  
 immediate Lawful Superior thereof, by Virtue of his Infeftment of the  
 same, by Charter or Precept dated ec. and Seisin following thereupon in  
 the said N. Notary publick dated ec. duly registered in the Register  
 of the said Defender to see if found and declared that the said Lands have  
 in Nonentry in the Hands of the said Superior thereof since the Death of  
 said B. who died last vest and seiss of the same and who ceased in the  
 Month of ec. or by Nullity of the Heirs Infeftment, or by the Acquirors  
 Neglect to insist for Implement upon the Resignation of his Author, or by  
 Vassals Neglect to renew his Infeftment upon his own Resignation, or  
 that the relesed Mails or Feu Dutys of the same yearly and termly since  
 Time for said, do belong and pertain to the said Pursuer as Donatary, and  
 in Time coming ay and while the Entry of the righteous Heir or Heirs; but  
 that the said Donatary by Virtue of his said gift hath good and unquench-  
 Right to poid the ground of the said Lands ec. for the said Nonentry Dutys  
 ofgone and in Time coming, till the Entry of the righteous Heir to the same  
 together with a Year's Duty foresaid for the Relief of the same, after the  
 Entry of the said Heirs conform to the said gift Laws and Prattice of the  
 Realm ec. in all Point &c. with Certification ec. According to Justice

There is no Difference betwixt the former and the Form of a Summons of  
 Declarator at the instance of the Superior, save that the Donatary's Interest is  
 left out. If the King be Pursuer, the Treasurer or Commissioners of Treasury or  
 his Majesty's Advocate are Pursuers. In a Summons of general Declarator  
 there is no Necessity to express the Right of the Superior, unless a difference  
 in conjunct Fee, or other Person whose Right the Vassal is not obliged to  
 know: But a Donatary's Right must be expressed; and it is more conven-  
 ent and effectual to label the Superior's Right, at least his Seisin Hair  
 Lib. 4. Tit. 8. § 2.

Nonentry

Nonentry was not declared till the Pursuer produced a Progress from  
 the Defender's Superior to whom he was singular Successor and never acknow-  
 ledged by the Defender or his Predecessors 18 January 1681 E. Quercus  
 =bury contra =frying. But the Superior producing his Infeftment needs  
 not instruct the Defender to be his Vassal or the Lands in Question  
 claimed by him as Part and Pertinent of those contained in his In-  
 =feftment to be so, unless the Vassal disclaim him as Superior in that  
 Part; nor is he put to prove that the Lands were void since the Time  
 =labeled that being a Negative which proves it self, unless the Vassal  
 shew that they were full Hair Jhd. § 24.

Before Citation in the general Declarator a Superior gets only  
 the relesed Duty (ie. the Part of the Rent which is not retained by the  
 in Lands holden Ward or Blench, Infeftment Hair Jhd. § 25. Nonentry, Hair Jhd. § 25.  
 If the Lands whereof the Nonentry Dutys we retained be Part of a Barony  
 which have one common Retour that common Retour is a Disposition to be  
 =portionally according to the present Rent of the Barony and a Disposition to be  
 =stated upon the Land in Question as its Retour 5 Feb. 1623 Hair contra  
 Hartwoodmires 19 July 1631 E. Kinghorn contra Strang Hair Jhd. § 25.  
 Lib. 4. Tit. 8. § 3. Sir George Mackenzie Hair Jhd. § 25. Hair Jhd. § 25.  
 that the Nonentry of Lands not relesed will serve the full Hair and  
 Dutys before citation. But this will not hold for the full Hair of Lands  
 =lands which were not relesed, as held for the relesed Duty, Hair Jhd. § 25.  
 Tit. 8. § 3. In a Feu holding the Superior gets only the full Hair 19 June 1631  
 E. Kinghorn contra Strang Hair Jhd. § 25. Tit. 8. § 3. Hair Jhd. § 25.  
 =Drolet. Douclet Tit. Feud. Yet will the Superior of Lands holden Feu get the  
 Feu Duty twice; viz. once as his own by Retours in the Charter and again  
 for the Casualty of Nonentry Stewart Hair Jhd. § 25. Nonentry. Formerly that is  
 before the Year 1690 the whole Annualrent in an Infeftment of Annualrent  
 was due for Nonentry; because Infeftments of Annualrent were relesed va-  
 =lore seipsum to be worth the full Value of the Annualrent. But that being  
 a heavy Burden upon the Heirs of Pursuers, Annualrents are now relesed  
 only if the Blench or other Duty contained in the Infeftment of Annualrent;  
 and the Superior can claim no more than that Duty till Citation in the ge-  
 =neral Declarator Act 42. Sect. 2. Part VII. M. After Citation in the general  
 Declarator the full Rent of the Lands, or whole Annualrent in an Infeftment  
 of Annualrent, is due to the Superior whether the Holding be Ward, Blench,  
 or Feu. 25 July 1666 Harper contra his Vassals 12 June 1673 Fra contra  
 L. Pourie to Lord Belmarino Spotswood Pratt Tit. Nonentry Because  
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