

the Vassal after citation is held to be more contumacious in wilfully lying out uninfest than before. But this claim to the full Rents being unfavourable, any probable ground of excusing the Vassal from contumacy in not entering to the Fee, is sustained to restrict the Nonentry to the retoured duty after citation. Thus if there be different Pretenders to the Superiority, the full Rents are not due while the Competition lasts 17 Feb. 1691 D. in Dutchofs of Hamilton contra Elies Feb. 1692 Dem contra Hettles. Stat Lib. 2. Tit. 4. §. 24. Where a Tailzie of Lands excluded a second inher thercof, so long as there was Hope of Existence of the first, the Nonentry was only extended to the retoured Duty, not to the full Rent. Seeing the apparent Heir was neither in culpa nor mora, but hindered to enter by suspensory Clauses in the Tailzie 24 July 1674 L. Melvil and his Son contra Bruce. The Discharge of a Declarator of Nonentry, having reduced incidently an Infestment upon a Retour founded on to exclude the Nonentry: The Nonentry was found to take Place only from citation in the Reduction 2. Novemb. 1672 E. Argyle contra L. McLeod. In a Process of Nonentry, the Instance of a Person interposed betwixt the Superior and his Vassal, the Superior's Infestment being found ineffectual lege prohibente, to transmit the Superiority; and the Disposition whereupon it proceeded, sustained on as a gift reaching the Casualties of Superiority: The Vassals were found liable for the full Rent only from the Date of the Interlocutor, annulling the interposed Infestment and sustaining the Disposition only as a gift of Nonentry. 16 July 1675 L. Kelhead contra his Vassals Because till then they had Reason to credit one was their Superior upon the Account of the ~~Disposition~~ Interposition. Where a singular Successor in the Superiority never acknowledged by the Vassal or his Predecessors, pursued Nonentry, the full Rent was not found due from the citation 18 January 1681 E. Queensbury contra Irvine. A Vassal was made liable for the full Rent and Duties only from the Date of the Decree finding his Lands to be in Nonentry Because he had Reason to credit it the Pursuer of the Declaration was his true Superior having produced a Progress holding of the Crown since the Reformation, and the Pursuer having a Certification in an Improbation, against any Rights granted by her to the Defender's Predecessors 22 Janu. 1706 Maitland contra Brand and nemo tenetur propter motum huius periculi, temere jus suum indefensum relinquere. l. 40. in fin. ff. de peth. Citation upon a Summons of Declarator of Nonentry, given to an apparent Heir intra annum deliberandi, was found not to intitle the Superior to the full Rent of the Vassal's Lands; albeit the Day of Com-

Compearance was after elapsing of Year and Day 24 July 1710 Baillie of Castlecary contra Brown. Yea, if the Superior is not misled immediately after citation, which may be left at the Vassal's dwelling House, and perhaps never come to his Knowledge; the Lords would not give the Superior the full Rents from the citation, but only from the Time the Vassal became wilfully contumacious Stat Lib. 2. Tit. 4. §. 24. Where a Subject Superior gifted the Apparent of his Vassal's Lands when they were full upon which a Declarator was raised on the Superior died before the Casualty fell, the Declarator insisted thereon after his Death with the Concurrence of his Heir, who was not found intitled to claim the full Rent of the Lands from the citation in his Declarator, but only from the Time that the Superior's Heir consented after he casually fell by Death of the Vassal 17 Feb. 1715 Mearns contra L. Forrester. Nonentry subsequent to War carries only the retoured Duty, the Declarator of the Superior or his Donatary was not in Rebellion by the War, and the full Rents for three Terms subsequent to the War, if he was in Rebellion, and the Heir continue so long unretoured. During these three Terms which comprehend the Year of Relief, Nonentry is of the Nature of the War: And after expiring thereof, the Superior hath Right only to the retoured Duty till Declarator 23 March 1622 L. Leslie contra L. Dilcapie. But the Heir Superior or his Donatary is in Possession, it were rigorous to extend this Nonentry to the full Rents, seeing in that Time, the Heir may be retoured, and the Superior charged by Precepts out of the Treasury to enter him; in which the Year of Deliberation is running he cannot be understood contumacious Stat Lib. 4. Tit. 8. §. 2. Besides the common Exceptions against Nonentry and other Rents, as Prescription, Homologation or Absence Perpublica causa of which their proper Places; there are special Exceptions against this Declarator as Nonentry is excluded if the Fee be full Grant Stat Lib. 2. Tit. 17. §. 9. Where the Fee is full by a voluntary Infestment granted to the Heir upon a Precept of clare constat, Nonentry cannot be claimed for Years during the Predecessor's Time, whom the Precept acknowledges to have died last vest and seised as of Fee. But Infestment granted to him in Recurrence to a Charge, hinders not the Superior or his Donatary to reply upon any relevant Ground that in an ordinary Action might have stopped the Entry of the Heir: As that he did not find Caution conform to the Clause capiendo Seivitatem; or did not pay when required the retoured Fee or Clerich Duties resting before the Charge, which ought to have been first done. Nor doth a voluntary Infestment granted to the Heir cut off Nonentry for any Terms betwixt the Predecessor's Death and the Infestment, unless the Heir be infest with a Novodamus renouncing all Casualties of Superiority in general, or Nonentry in particular before the Nonentry was fled