

\* \* \* The same case is reported by Durie :

No 56.

ONE Fisher's predecessors having disposed some annualrents out of lands redeemable, conform to a reversion, the right of the which annualrents being acquired by Brown, a smith, against whom an order of redemption was used, and declarator thereon sought; THE LORDS found no process upon that declarator, because none was summoned thereto, to represent the granter of the said reversion; but because it was *in facto antiquo*, and it was not known who was of kin to the said person who granted the said reversion, therefore the defender was ordained to condescend who was apparent heir to him, who ought to have been summoned; but this decides not the doubt arising on the 27th act, 5th Parl. James III. whether the order of redemption ought to be used against that person or not, or if it suffice that the singular successor only was warned by the order; for this decision was only for this citation to the summons of declarator; for albeit that was not now questioned, yet many of the LORDS were of opinion, that the order needed not to be used against the apparent heir's foresaids, but only the declarator; but it would appear, that if the order needs not to be used against him, no more the declarator; and sicklike if he be necessary to be cited to the declarator, far more to the order.

Act. ———.

Alt. *Mowat.*

Clerk, *Hay.*

*Durie, p. 527.*

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S E C T. XV.

Citation in Declarator of Escheat.

1603. *February.* WATSON *against* TENANTS.

A MAN in Aberdeen being put to the horn, his escheat and liferent is disposed to one Watson, who, after general declarator obtained by him, made warning to certain of the rebel's tenants to remove. They excepted, that no process should be granted, because they were tenants to the master, who was heritably infeft, and was not called. It was *answered*, That he being rebel, and, by his remaining year and day at the horn, the pursuer having obtained the gift of his liferent and declarator thereupon, in effect, he was his author, and so needed not to be called. THE LORDS repelled the exception, and found he needed not to call the rebel.—Thereafter Mr Robert Paip. compeared, and *alleged* that the tenants of these lands could not be removed at the pursuer's instance, because the said Mr Robert was heritably infeft in the saids lands; and so the pursuer, not being infeft, could have no action for removing the tenants, or apprehending the possession of the said lands. It was *answered*, If any infeftment

No 57.

The donatar to a rebel's liferent having obtained general declarator, the Lords found that he may warn tenants to remove without necessity of calling the rebel.

No 57. the said Mr Robert had, it was granted by the rebel after his declarator; and so the donatar, having obtained declarator, could not be prejudged thereby. In respect whereof the Lords repelled the allegiance.

*Fol. Dic. v. 1. p. 137. Haddington, MS. No 678.*

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1609. December 7. JOHN JOHNSTON *against* WILLIAM NAPIER.

No 58.  
The heirs and executors of a defunct rebel must be called to a special declarator; but if they concur without citation, it will be sufficient.

MR. JOHN JOHNSTON donatar to the escheat of Nicol Uddart pursued William Napier to hear and see a decret-arbitral pronounced betwixt the saids Nicol and William reduced. It was *alleged*, That no process should be granted, because the pursuer had not libelled, that he had obtained declarator upon his gift; which allegiance was found relevant, while it was taken away by a reply, that he had obtained declarator, which was produced in process. Thereafter it was *alleged*, That no process should be granted, because all parties having interest were not called, viz. the heir, the relict, and the bairns of the said umquhile Nicol, who had right to his goods. It was *answered*, That his heir and relict were called to the declarator, it was not necessary to call any others. THE LORDS found it was necessary to call the bairns, who would have fallen executors: And thereafter the pursuer offering to cause them concur, the LORDS sustained the concurrence, he producing a special mandate.

*Fol. Dic. v. 1. p. 137. Haddington, MS. No. 1685.*

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1610. January 13. LAIRD OF PRESTON *against* ARTHUR HAMILTON.

No 59.

A DONATAR having obtained a general declarator, thereafter calling a debtor to the rebel to make arrested goods furthcoming, needs not summon the rebel, because his preceding declarator has transferred the rebel's whole right in the donatar's person.

*Fol. Dic. v. 1. p. 137. Haddington, MS. No 1730.*

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1610. May 31. GIBSON *against* LIBBERTON.

No 60.  
In a declarator of a dead man's escheat, not only the wife and children must be called, but the heir, because of his heirship goods.

A DONATAR taking declarator of the escheat of a defunct, will get no process against the heir and relict, if there were executors confirmed before the intending of his cause, in case he have neither called the executors, nor the defunct's hail bairns, who might have been his executors. A horning and gift of escheat following thereupon will not be decerned null upon an exception in the declarator, that the defender offers him to prove that the debt was paid before the denunciation, because that must bide reduction. *See ESCHEAT.*

*Fol. Dic. v. 1. p. 136. Haddington, MS. No 1873.*