

1610. June 8.

MUCHET *against* MUCHET.

HE who seeks declarator of the escheat of a defunct, should call thereto his heir and the nearest of kin, in case he has no executors confirmed, and it is not sufficient to call the relict. If the pursuer pass from the heir, and all prejudice that may befall to him by the declarator, his summons will be sustained, albeit the heir have not been summoned.

*Fol. Dic. v. 1. p. 136. Haddington, MS. No 1887.*

No 61.

Found as above.

1611. January 15.

VEITCH *against* BRUNTON.

HE who seeks declarator of the escheat of a defunct should summon the heir and hail bairns of the defunct to represent him; and, if he omit any of them, he will get no process, unless the defunct had executors confirmed, in which case it were sufficient to summon the heir and the executors.

*Fol. Dic. v. 1. p. 136. Haddington, MS. No 2086.*

No 62.

Found as above.

1611. February 2.

FRASER *against* M'FINZEAN.

HE who obtained decret of declarator against a rebel in his own time, seeking a special declarator thereof after his decease, if year and day be past, the pursuer needs only to call the heir of the defunct, and not the relict, bairns, or executors.

*Fol. Dic. v. 1. p. 137. Haddington, MS. No 2141.*

No 63.

In a special declarator, the Lords found, that there was no necessity to summon the children of the defunct rebel, because a general declarator was obtained against the defunct himself.

\* \* Lord Kerse reports the same case :

IN an action of special declarator, pursued by Hugh Fraser of Culliboky *contra* one M'Finzean, THE LORDS found no necessity for summoning the bairns of the defunct, nor to produce the horning, because a general declarator was obtained against the defunct himself, and the defender was convened as heir, and so had no interest to see the horning.

*Fol. Dic. v. 1. p. 137. Kerse, MS. fol. 228.*

1612. January.

BALFOUR *against* FUTHIE.

IN an action of special declarator betwixt Balfour and Futhie, the LORDS repelled an exception founded upon the diligence of Bysack against Gund, who was party contractor, whom he had put to the horn for not fulfilling of the

No 64.

No 64.

contract, and found that the donatar, notwithstanding thereof, might crave the price of the land.

*November 12.*

In a special declarator, pursued by Alexander Balfour donatar to the escheat of James Futhie of Gund *contra* Henry Futhie of Bysack; the LORDS refused to cause the donatar to produce the horning.

*Fol. Dic. v. 1. p. 137. Kerse, MS. fol. 228.*

\* \* Haddington reports the same case :

*January 11.*—BALFOUR, donatar to the escheat of James Futhie of Gund, having obtained a general declarator, and thereafter seeking a particular declarator for 2100 merks against Henry Futhie of Bysak, the LORDS fand, that the pursuer could not be compelled to produce in the particular declarator standing, notwithstanding that the defender alleged the practic between Dempster and Ogilvy, and divers other practics, where the donatar was compelled to produce his horning in the particular declarator after a general.

*Fol. Dic. v. 1. p. 137. Haddington, MS. No 2351.*

1626. *November 21.*

SEATON OF MELDRUM, Supplicant.

No 65.

Found, in the last paragraph of this case, in conformity with No 63. *supra.*

A SUPPLICATION being given in at the instance of ——— Seaton of Meldrum, making mention that he had raised brieves for serving of himself heir to umquhile Mr George Seaton; therefore he craved warrand from the LORDS to the persons of inquest, for dispensing with the rebellion of the said umquhile Mr George, and that they should proceed in the service of the said brieves, notwithstanding that he died rebel, and was at the horn; and this was desired, in respect of the common clause of all brieves, bearing, To cognosce that the defunct died at the faith and peace of our Sovereign Lord, &c. This bill was refused, because the LORDS found, that it was not proper to them to dispense with hornings or rebellion, for that was not *sue jurisdictionis*, but only *imperii et potestatis regie*; and that it was only proper to the King to dispense therewith, albeit of reason such dispensations are unnecessarily sought, seeing the persons of inquest are ever in use to serve, notwithstanding that the defunct, to whom the service is sought, died rebel; and if that should be found to be a fault of the service, and of the retour following thereupon, many services would fall; for by this proceeding of the service none is prejudged; but, by the contrary, the heir served is liable to the creditors for the defunct's debt, and for any thing for which he was rebel; only the doubt may be, if an irresponsal person shall be served heir, and yet whether he be responsal or not, that hath no coincidence with the case foresaid, and makes nothing concerning the defunct's rebellion,