

No 8.

1624. *March 9.*L. TOUCH *against* E. HUME.

IN an action betwixt L. Touch and E. Hume, being a cause of special declarator, which being accessory to a general one, the LORDS found, that there needed no continuation in special declarators, in respect of a privilege contained in the summons, viz. because it was accessory to the general declarator, albeit the special declarator was pursued for payment of certain particulars, consisting *in facto*, which of its own nature required continuation, and for the which, if the rebel's self had intended pursuit, the summons behoved to have been continued, and that it was alleged, that the general declarator put only the donatar in the rebel's place, which was repelled, as said is, in respect of the preceding general declarator, which put the donatar in a better case than the rebel, and in respect of the privilege.

Act. *Stuart & Craig.*Alt. *Hope.*Clerk, *Gibson.**Durie, p. 119.*

No 9.

An heritable bond, on which infestment has not followed, does not fall under single escheat.

1626. *July 1.*HALIBURTON *against* STUART.

ONE Haliburton being assigned by Sir George Hume of Manderstoun, who was donatar to the L. of Coldingknow's escheat and liferent, in and to a part of the said escheat and liferent, so far as concerned an obligation, granted to the L. of Coldingknows, by Francis Stuart, son the late Earl Bothwel, upon a sum of money, which was an heritable bond, bearing, 'the debtor to be obliged ' to infest the creditor in an annualrent, in case of failzie to pay the principal ' sum, at the terms appointed by the bond,' it being controverted in this cause, how far this escheat, or liferent should extend to, anent this sum and the profits thereof; the LORDS found, that the principal sum (the same being owing, as said is, by an heritable bond,) fell not under the said escheat, neither simple nor liferent; but found, that all the by-run annuals owing preceding the date of the gift, fell under the rebel's simple escheat; and sicklike, that the annuals addebted, in time to come, after the gift fell, since the expiring of year and day after the rebellion, under the liferent escheat; and found, that the same pertained to the King's donatar, and not to the debtor, granter of the bond, who was obliged to give the infestment of the annualrent, seeing the said bond bore not to grant that infestment of the annualrent, 'to be holden of the annailziar's self,' but being granted indefinite, without mention of any superior, of whom the same annualrent should be holden; it was presumed for the King, that he behoved to be superior, of whom the said annualrent should be holden, and so to belong to his donatar. And this was found, albeit no infestment