

tinued, in respect he was necessitated to prove, both that my Lord Angus had a regality there, and that the defender dwelt within the same. It is otherwise when one pursues a general declarator upon the king's gift, who is founded *in jure communi*.

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1627. June 26. LORD ANNANDALE *against* SIR RICHARD MURRAY.

THE Lord Annandale sought a general declarator of the escheat of umquhile James Murray of Cockpool. Excepted by Sir Richard Murray, Sir James's brother, That no declarator ought to be granted for the escheat goods, because, by decret-arbitral, pronounced by the pursuer himself, betwixt the defender and the relict of Sir James, the whole moveable goods pertaining to the defunct were adjudged to the defender. Answered, It ought to be repelled, in respect the pursuer hath acquired the gift of his escheat since that decret, which could not prejudice the King of his right, nor the pursuer now his donator. Replied, The pursuer was *in pessima fide* to take any gift in prejudice of the defender, and his own decret given in his favours. The Lords, notwithstanding, repelled the allegiance.

Page 14.

1627. June 29, &c. MARGARET BAILLIE *against* JANET ROBERTON.

A WOMAN being summoned in the principal summons, if thereafter she marry, (because a wife cannot answer unless her husband be summoned,) the pursuer, commonly by a bill, meaning himself to the Lords, gets the summons continued against her husband, as if he had been summoned in the beginning. This was found between Margaret Baillie and Janet Robertson.

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1627. July 13. JAMES SEATON of TOUCH *against* WILLIAM HOME of HARDIS-
MILN.

JAMES Seaton of Touch having obtained precepts forth of the chancery, charges William Home of Hardismiln to infest him in some lands: he suspended, by consigning of a precept of sasine in the clerk's hands. At the reasoning, the suspender alleged, That he had a summons of reduction intented against the charger, for reducing of the charter granted by the suspender to the charger's umquhile father, which behoved to be first discussed; because, if the charter were reduced, *frustra* should he infest him. Always the Lords ordained the precept to be given up to the charger; for otherwise they thought that all charges out of the chancery might be eluded and put off, by intending of a reduction.

See other reports of this Case referred to in the Index to the Decisions, under Touch *against* Home.

Page 5.

1627. July 26. JOHN INGLIS *against* GILBERT KIRKWOOD.

JOHN Inglis having right to my Lord Ochiltrie's escheat, by assignation from Anna Ker, Lady Garthland, who had right thereto by the Laird of Caprington, principal donator, pursued spuilie of the teind sheaves of the lands of Killeith against Gilbert Kirkwood. Alleged, That the defender did no wrong in meddling therewith, because he had a right to these teinds, disponed to him by James Donaldson, to whom my Lord Ochiltrie had disponed them, 1614; by virtue whereof the defender and his author had possessed them 13 or 14 years. Replied, That disposition made by my Lord Ochiltrie was null, as being made *stante rebellione*, during which time he could make no right in prejudice of the king and his donator. Duplied, The allegiance stood relevant notwithstanding: because the hornings upon which my Lord Ochiltrie's escheat was gifted, being the one 1603 and the other 1607; the defender having acquired lawfully for onerous causes the right of that tack, and by virtue thereof peaceably possessed the same for so many years, before any gift of escheat purchased by the pursuer,—the same tack could neither be reclaimed by the donator to the single escheat; and further, the right of the tack could not fall under the pursuer's gift, because the right thereof was not acquired by my Lord Ochiltrie four years after the first and second hornings, by virtue whereof it is craved: And, by the daily practique, there comes nothing under the single escheat, but such moveables as belong to the rebel the time of his denunciation, or at the most within a year thereafter. In respect whereof the defender brooking, by virtue of a title standing clothed with twelve or fourteen years' possession, could not be convened as wrongous intromitter, to which the pursuer had restricted his summons. The Lords found that the right made by my Lord Ochiltrie, the time of his rebellion, was null, and sustained the summons for all years after the pursuer's general declarator, (which they found put the defender *in mala fide*.) And so repelled the exception. See the case below.

Page 100.

1627. July 26. JOHN INGLIS *against* GILBERT KIRKWOOD.

THERE was an action of spuilie of the teinds of Killeith, pursued by John Inglis, merchant burghess of Edinburgh,—(who had right thereto, by virtue of a tack set by the town of Edinburgh to the Lord Salton, which tack was assigned by him to the Lord Ochiltrie, by whose rebellion the right thereof fell into the king's hands, and was gifted and declared in favours of Caprington, who made Anna Ker, daughter to the Lord Jedburgh, assignee thereto, which Anna transferred her right to the same in John Inglis's person,)—against Gilbert Kirkwood. Alleged, Absolvitor; because any intromission the defender had with the