

1618. *January 10.* *HIRPET against SCOT.*

No 42.

IN an action of declarator of bastardy, James Hirpet *contra* Gabriel Scot, THE LORDS found no necessity to summon the nearest of kin, but let them compare for their interest; and, in this same case, they found an exception of tatrix, *habitus et reputatus* lawful, relevant, in respect Gabriel Scot, who was alleged bastard, died being 50 years of age; and found no necessity to allege, that his father and mother were married after so long a time.

Fol. Dic. v. 1. p. 135. Kerse, MS. Fol. 143.

1679. *December 11.* *SOMERVEL against STAYNS.*

No 43.

JAMES SOMERVEL having obtained a gift of bastardy of Janet Stayns, pursues a declarator thereof against William Stayns and Robert Handside intrmitters with the bastard's goods, libelling, That the defunct was reputed bastard, during her life. The defender *alleged* no process, because the summons bears not the names of the father and mother of the alleged bastard. *2do*, The lawful contradictor is not called, *viz.* That person who would be heir to the defunct, if she were not bastard. The pursuer *answered*, That he doth now condescend upon the father and mother; and that he had cited all parties having interest at the market-cross; and bastards have no *agnates* on the father's side; and their *cognates* on the mother's side cannot succeed.

THE LORDS sustained the declarator with the condescence, and found that the general citation was sufficient, unless particular persons were named who would succeed, if the defunct were not proven bastard; and in case such were named, ordained the summons to be continued against these persons, and they cited thereupon.

In a declarator of bastardy, a general citation at the market-cross of all parties having interest is sufficient, unless particular persons be named who would succeed, if the defunct were not proven bastard. These in that case must be cited *cum processu*.

Fol. Dic. v. 1. p. 135. Stair, v. 2. p. 720.

SECT. XI.

Citation in Declarator of Property.

1633. *December 21.* *L. WEMYSS against STUART.*

THERE being mutual actions of molestation intended betwixt the said parties, before the Sheriff of Perth, which were, by consent of parties, advocated to the Lords;

No 44.
Declarator of property may be pursued.

No 44.
against the
feuars of the
lands, with-
out calling
the superior.

and the L. Wemyss being permitted to mend his precept, and to turn it to a declarator for finding the property of the lands, and others libelled, to pertain to him, as his own property ; which action being pursued at his instance and his son's, who was fiar, and himself liferenter, the LORDS found process, and sustained the action at the father's instance, who was liferenter, albeit the fiar was debarred by the defender by horning ; seeing the father liferenter might seek this declarator upon the property, that the fee given to his son might be profitable and effectual to him ; and this action was not sustained as merely petitory, but as mixed with the possessory, for maintaining of the pursuer's possession, as he libelled within his property, albeit the defender alleged, and claimed contrary property and possession ; and also this action was sustained, albeit the defender alleged his property could not be disputed, except that his superior, of whom the defender held the lands wherein he was infest, and whose vassal he was, were expressly called to this pursuit ; who not being called, his right could not be questioned, nor he prejudged of his right, by calling of his vassal only, and not calling of himself, who was only the just party who should, and might maintain his own right ; which was repelled, and this process and action against the vassal, who was heritor, was sustained. See PROCESS.—LIFERENTER.

Act. Stuart.

Alt. M.Gill.

Clerk, Hay.

Fol. Dic. v. I. p. 135. Durie, p. 697.

1677. November 8.

EARL OF MORAY against The FEUARS of the Salmon-fishing of Ness.

No 45.

In a declarator that the Sheriff of Inverness had right to fish three days in the water of Ness, no necessity was found to call the town, or any but the possessors.

THIS is a declarator that the Earl, by his gift-right sheriffship of Inverness *ad vitam* has right to fish three days in the time called the summer-moon, conform to his possession. *Alleged*, The Sheriff and Town of Inverness are not called. *Answered*, He needs call none but the possessors, let them intimate the distress. THE LORDS repelled the allegiance.

Fol. Dic. v. I. p. 135. Fountainball, MS.

Huntley, as Constable of Inverness, claimed right also.

SECT. XII.

Citation in Declarator of Marches.

1623. February 28.

IRVING against FORBES.

No 46.

In an action against a wadsetter,

IN an action pursued by Irving, who was heritable proprietor and co-partioner of a land, which had a moss belonging to the whole land, against one Forbes,