

No 21.

Found in
conformity
with No 19.
p. 1788.

1665. July 19. MR THOMAS JOHNSTON *against* M'GREGOR.

MR THOMAS JOHNSTON having obtained the gift of bastardy of one M'Gregor, and declared in general; *insists* now in his special declarator against Patrick M'Gregor, for 2000 merks belonging to the bastard.—It was *alleged* absolutor; because there was a gift granted in the usurper's time, and declared, whereupon the defender had transacted with the donatar, and satisfied him, and obtained his discharge.—It was *answered, non relevat*, because in the act of Parliament confirming judicial procedure under the Usurper, gifts, of bastardy, and all following thereupon, are excepted; so that the defender had no defence in the point of right; and as for his *bona fides*, it was only relevant for what was truly paid, but not for what was in his hand.

THE LORDS repelled the defence, in respect of the reply.

Fol. Dic. v. 1. p. 113. Stair, v. 1. p. 309.

1666. January 10. PENNICOOK *against* LORD RUTHERFURD.

No 22.

Found in con-
formity with
No 17. p.
1787.

THE deceased Earl of Teviot did leave in legacy to Mr Archibald Wilkie, the liferent use of L. 1000 Sterling; the fee thereof he did destinate for redeeming the said Mr Archibald his lands, in favour of Mr Archibald's son, Alexander Pennicook, as donatar to Mr Archibald his liferent and escheat; and having obtained general and special declarator thereupon, has now intented process against the new Lord Rutherford his tenants, and against him for his interest, for making arrested goods furthcoming. It was *alleged* for the Lord Rutherford, No process, at the donatar's instance, for one year's annualrent of the legacy, because, he had made payment thereof to the rebel himself, and received his discharge thereof, before the intending of the special declarator.—It was *replied* by the pursuer, That he opposed his special declarator wherein the Lord Rutherford was compearing; and the allegiance being then competent, was omitted.—THE LORDS, in respect of the Lord Rutherford's absence the time of the dispute in the special declarator, and that the decret was once stopt, reponed him to his defence; and being reponed, found that a debtor to the rebel was in *bona fide* to pay him, and to accept of the rebel's discharge *quocunque tempore*, before the special declarator; and found, that a general declarator does not put the rebel's debtor in *mala fide*, in regard the citation is only general at the market cross.

Fol. Dic. v. 1. p. 113. Newbyth, MS. p. 48.