

S E C T. II.

Non valens, vi majore, by unjust banishment, &c.

1666. December 8.

LESLIE *against* LESLIE.

PATRICK LESLIE of Balquhoyn pursued a general declarator of the single and liferent escheat of John Leslie of Balquhoyn, against James Leslie and his spouse, as nearest of kin to the said John. It was *alleged*, That the horning was prescribed, the declarator being raised forty years after the horning. It was *replied*, That though prescription should run against the King (which was denied) yet in this case it could not; the King being minor the time of the prescription diverse years, and the government being interrupted; so that there was not *tempus utile* during the usurpation; and the King is not in use to dispose of escheats, until application be made to his Majesty; and, by the act of Parliament, it is provided, that the negligence of his officers should not prejudice him.

THE LORDS found, That the horning did not prescribe, in respect of the King's minority, and interruption foresaid.

It may be asked, If that reply of his Majesty's minority and interruption were not competent? And if the escheat were gifted by a Lord of regality or a superior, *quid juris?* And it seemeth that a horning being *pæna*, and once execute, doth not prescribe; seeing the rebel, if he should survive forty years, his liferent would fall to the superior; and there is no reason that he should *lucrari*, and be in better case *ex culpa*, and by the continuance of his rebellion for so long a time.

Fol. Dic. v. 2. p. 124. Dirleton, No 59. p. 25.

1678. January 25. Duke of LAUDERDALE *against* The E. of TWEEDALE.

THE Duke of Lauderdale, as successor to the Lord Thirleston, chancellor, his grandfather, having right to that part of the Abbacy of Dumfermling on the south side of Forth, whereof the teinds of Pinkie are a part; and having used inhibition at the parish-kirk door *in anno* 1664, pursues the Earl of Tweedale as heritor and intromitter with the teinds of Pinkie, since the inhibition, for a spuilzie, and before, for wrongous intromission. This cause being disputed the 23d of this instant and decided as to the defences then proponed; the defender now further *alleged* absolvitor, because he and his authors have bruiked the teinds in question since the year 1593 without interruption, in so far as *in*

No 373.

In a declarator of escheat, found that the horning did not prescribe on account of the King's minority, and interruption of the government.

No 374.

Non valens agere ob defectum tituli, the party being forfeited at the time, was sustained to stop the running of the positive prescription.