

1669. *January 19.* MR GEORGE JOHNSTON *against* The LORD LYON and OTHERS.

IN a declarator, pursued at the instance of the said Mr George, against Mr James Alexander, and the Lord Lyon, as having right from him, to hear and see it found, That an apprising of the lands of Knockhorn, led at Alexander's instance, was satisfied by intromission within the legal;—it was ALLEGED, That the pursuer could have no interest to pursue this action; because his right flowed from the sisters of Robert Irving, against whom Alexander's comprising was led, as lawfully charged to enter heir to Richard Irving, their grandsire; the sisters' right, made to the pursuer, being as heirs served and retoured to the said Richard, their goodsir; whereas none could redeem the comprising, or pursue this declarator, but the heirs of Robert, from whom the lands were comprised.

The Lords repelled this defence, and found, That Robert, being only heir *passivè*, and never entered, his sisters, being infest as heir to the grandsire, had a good right to redeem or pursue a declarator for extinguishing the comprising.

*Page 30.*

---

1669. *January 19.* ——— ENGLISHMEN *against* The LORD TORPHICHEN.

THE said Englishmen, being creditors to James Mason, merchant in Edinburgh, and infest in annualrent out of his lands, holden of the Lord Torphichen, did pursue a poinding of the ground against young Mason, his son; and did likewise libel a declarator, to hear and see it found, That the right taken by the father, in the name of young Mason, should be liable to his father's debts, and they have such action against the same as if it were settled in the father's person.

In this action compearance was made for the donatar of the father's liferent escheat, and for the Lord Torphichen, who was superior, and likewise a creditor; and ALLEGED, That, before the pursuer's infestment was clad with possession, old Mason was year and day at the horn, and thereby his liferent escheat belonged to the superior; and that, notwithstanding he had received Mason's son to be his vassal, yet, as a lawful creditor, he had reduced the son's right.

This allegiance was repelled; for the Lords found, That the superior, having once received a vassal before the annual rebellion, he could have no right to the liferent escheat of the former vassal, who had resigned; and the reduction did not denude young Mason of the right of the fee, so as to make the liferent escheat revive, but gave only right to the superior, *in quantum* he was creditor, to affect the lands for his true debt.

*Page 31.*

---