

1678. July 13. MADAM GUN *against* SINCLAIR of South Dun.

No 55.

THE LORDS sustained a pursuit, where the retour was dated after the summons, because an universal title; as they do with an executor producing a confirmed testament before extract; but if the pursuit be on a singular title, as an assignation, the Lords make a distinction of this from the other cases, and require the title to be before the summons, as was decided between Mr John Abercromby of Cliesh, and Anderson, 15th November 1666, No 48. p. 13277.

Fol. Dic. v. 2. p. 303. Fountainhall, MS.

1683. March —. Lord LIVINGSTON *against* GORDON.

No 56.

IN an action of mails and duties, at the instance of a donatar of forfeiture, it was *objected*, no process till the gift be declared. THE LORDS allowed declarator to be raised *incidenter* in the present process.

Fol. Dic. v. 2. p. 307. Harcarse. P. Falconer.

* * * This case is reported by Harcarse, No 18. p. 3416. *voce* DECLARATOR; and by Harcarse and P. Falconer, No 41. p. 4714. *voce* FORFEITURE.

1683. November 10. DUNDAS *against* WALLACE and BIGGAR.

No 57.

LORD CARSE probationer reported Mr William Dundas Advocate his reduction and improbation against Hew Wallace and William Biggar, anent the estate of Wolmet. The LORDS found the pursuer being only a naked adjudger could not call for production, in order to reduction, (for if he restricted himself to improbation, he might,) of any real right, or infestments, but only of personal rights, whereupon no infestment had followed, and that the charge Mr William had given to the Earl of Lauderdale, superior of Wolmet, as a part of Musselburgh, to enter him, was not sufficient to give him interest to call for real rights, because the charge was done since the raising of his summons. Though a retour posterior to a summons will be drawn back, because it is only declaratory of the heir's prior right, yet an adjudger from an apparent heir being a singular successor, ought not to have that personal privilege, and therefore they found he could not urge that charge, unless he raised a summons posterior thereto. Some are of opinion, that even a charge against the superior (without also denouncing him, or an actual infestment,) is not a sufficient ground in a reduction to force the production of real rights. See TITLE TO PURSUE.

A charge against a superior, given by an adjudger; after intending a process of reduction, not allowed to draw back to support the process.

Fol. Dic. v. 2. p. 305. Fountainhall, v. 1. p. 241.