

1610. June 8.

MUCHET *against* MUCHET.

HE who seeks declarator of the escheat of a defunct, should call thereto his heir and the nearest of kin, in case he has no executors confirmed, and it is not sufficient to call the relict. If the pursuer pass from the heir, and all prejudice that may befall to him by the declarator, his summons will be sustained, albeit the heir have not been summoned.

Fol. Dic. v. 1. p. 136. Haddington, MS. No 1887.

No 61.

Found as above.

1611. January 15.

VEITCH *against* BRUNTON.

HE who seeks declarator of the escheat of a defunct should summon the heir and hail bairns of the defunct to represent him; and, if he omit any of them, he will get no process, unless the defunct had executors confirmed, in which case it were sufficient to summon the heir and the executors.

Fol. Dic. v. 1. p. 136. Haddington, MS. No 2086.

No 62.

Found as above.

1611. February 2.

FRASER *against* M'FINZEAN.

HE who obtained decret of declarator against a rebel in his own time, seeking a special declarator thereof after his decease, if year and day be past, the pursuer needs only to call the heir of the defunct, and not the relict, bairns, or executors.

Fol. Dic. v. 1. p. 137. Haddington, MS. No 2141.

No 63.

In a special declarator, the Lords found, that there was no necessity to summon the children of the defunct rebel, because a general declarator was obtained against the defunct himself.

* * Lord Kerse reports the same case :

IN an action of special declarator, pursued by Hugh Fraser of Culliboky *contra* one M'Finzean, THE LORDS found no necessity for summoning the bairns of the defunct, nor to produce the horning, because a general declarator was obtained against the defunct himself, and the defender was convened as heir, and so had no interest to see the horning.

Fol. Dic. v. 1. p. 137. Kerse, MS. fol. 228.

1612. January.

BALFOUR *against* FUTHIE.

IN an action of special declarator betwixt Balfour and Futhie, the LORDS repelled an exception founded upon the diligence of Bysack against Gund, who was party contractor, whom he had put to the horn for not fulfilling of the

No 64.