

PROCESS.

SECT. I.

Libel.

1583. November.

A. against B.

THERE was one called A. B. that pursued another party for the cutting and destroying of certain corns growing upon the pursuer's ground; and also for the wrongous molestation of him in the said ground; and also concluded, in the self same libel, to hear and see the defender ordained to desist and cease from the violent occupation of the ground foresaid. It was *alleged* against the libel, Quod fuit irrelevant et ineptum in se in tanto quod concludebat both cutting and destroying of corns, and to desist and cease from occupation of the ground et sic fuit inepta actionum cumulatio. To this was *answered*, That accumulation might stand well with the law quando ex eodem facto plura et diversa agenda jura competunt ut in presenti casu. Which was admitted by the LORDS; and so the libel found relevant.

No 1.  
Cumulatio  
actionum.

Fol. Dic. v. 2. p. 179. Colvil, MS. p. 379.

1598. June 7.

JOHNSTON against DOBIE.

THOMAS DOBIE, messenger, burgess of Edinburgh, having drowned himself in the Quarry-holes, the gift of his escheat was disposed to Symon Graham, who made James Johnston assignee thereto. It was *alleged* by Mr J. Sharpe, for the bairns of the said umquhile Thomas, That this declarator must abide continuation, because the hail summons may not be verified *instante*; but ane

No 2.  
Summons of  
declarator of  
escheat of a  
felo de se  
found to need  
no continua-  
tion, espe-  
cially where

No 2.  
trial had been  
taken of the  
fact upon the  
dead body by  
an inquest.

part thereof being *in facto*, viz. the fact anent the defunct's slaying of himself, must bide probation, and so must bide continuation. It was *answered*, That the fact was notour, and needed no probation; and that the Provost and Bailies of Edinburgh had tried, by assize led against the dead corps, that he had drowned himself. THE LORDS found process. *Secondly*, it was *alleged* peremptorily, That no declarator could be granted in this case, because of the law, that that whilk is committed by ane man being actually furious, can noways be punished; and true it was, that this man was furious at the time of destroying of himself, and committed infinite acts of folly and fury all his life, and specially twenty days immediately preceding his decease. It was *answered*, The laws alleged bearing impunity to ane man committing any crime of slaughter, parricide, spuilzie, or sick like, against another, meet nothing in the cause; because the crime was committed against himself; whereof no mention was made in any of the said letters. *Secondly*, *Nemo mentis compos manus sibi infert*; and, therefore, either the King man tyne this part of the privilege of his crown, or else fury man be na excuse in defence of the crime committed, *quia nemo sanus id perpetrat*. *Lastly*, The alleged fury cannot come in trial in this cause, because there was no brieve of idiotry or fury served against this man before his decease; and, by the practice of this realm, fury cannot be proved by witnesses after ane man's decease; and of the canon law, *qui sibi mortem*; and his goods are escheat, and Christian burial is refused to himself. In respect of the whilk answers, the LORDS repelled the allegeance, and granted declarator general. *Rege presente*.

*Fol. Dic. v. 2. p. 178. Haddington, MS. No 626.*

1610. June 29.

KELBIRNIE against DICK.

A PARTICULAR declarator, being subsequent to a general, needs not to be put under continuation, albeit it consist *in facto*.

No 3.

*Fol. Dic. v. 2. p. 178. Haddington, MS. No 1935.*

1612. June 23.

A. against B.

SUMMONS to make arrested gudes furthcoming need not be continued, albeit they receive probation, no more than contraventions accessour to ane contract of lawburrows, violent profits accessour to a removing, special declarator after ane general.

No 4.

*Fol. Dic. v. 1. p. 178. Haddington, MS. No 2479.*