

1628. *March 18.* LO. CATHCART. *against* L. CARSE.

No 54.
Found necessary to call heirs of line, as well as of tailzie.

IN a redemption, Lord Cathcart against Laird Carse, the LORDS found no process until the heirs of the granter of the reversion were summoned to the declarator of redemption, whom the LORDS found necessary parties to be summoned, albeit the heirs of tailzie to the granter, and which heirs of tailzie bruiked the lands, whereof the reversion was granted, and were standing heritably infest in the said lands, and were heritable proprietors thereof, and the tenants possessors thereof, were summoned in this cause, which the LORDS found not enough.

Act. *Sharp.*

Alt. —.

Clerk, *Gibson.*

Fol. Dic. v. I. p. 136. Durie, p. 363.

1629. *March 25.* THE EARL OF BUCCLEUGH *against* DAVID YOUNG.

No 55.
A compriser from a wadsetter, charged the reverser to receive him as vassal. The charge was suspended, and liti-contestation made in the process; yet, in a declarator of redemption, found not necessary to call the compriser.

THE Earl of Buccleugh pursued a declarator of redemption against David Young, for redeeming of the five merk land of Limpitlaw. Compeared Walter Ker, who had comprised the same lands from David Young, before the order of redemption, and *alleged*, That all parties having interest were not warned, viz. himself, who had comprised the lands, and charged the Earl himself to receive him; which charge the Earl suspended, and liti-contestation was past in the suspension, and that long before the order of redemption; so that the Earl could not misken him, but he should have warned him to the redemption.—*Replied*, That there was no necessity of warning any but David Young, who was heir to the receiver of the wadset and granter of the reversion. THE LORDS repelled the allegiance.

After that the order was sustained, the compriser sought to have the consigned money delivered to him.—*Answered* for the Earl, That he should have retention of the money, because long before the comprising, David Young, in whose place the compriser was only come, was debtor to the Earl in greater sums than the money consigned.—*Replied*, It could not compensate against the compriser of the heritable right of wadset, before the sum consigned became moveable by the order, seeing an heritable right and moveable sum could not compensate.—THE LORDS ordained the compriser to have up the money consigned. *See* COMPENSATION.

Fol. Dic. v. I. p. 136. Spottiswood, p. 264.

No 56.

1630. *July 9.* GEORGE FISHER *against* THOMAS BROWN.

It is now observed, That there is no necessity to make premonition and warning to any but the heritable possessor; but in the summons of declarator upon the order, not only the present heritable possessor, but also the heir, or apparent heir of the first granter of the reversion, must be summoned; and although the land analzied under reversion hath past through never so many hands, yet the redeemer needs not summon any but these two.

Fol. Dic. v. I. p. 136. Spottiswood, p. 260.

* * * The same case is reported by Durie :

No 56.

ONE Fisher's predecessors having disposed some annualrents out of lands redeemable, conform to a reversion, the right of the which annualrents being acquired by Brown, a smith, against whom an order of redemption was used, and declarator thereon sought; THE LORDS found no process upon that declarator, because none was summoned thereto, to represent the granter of the said reversion; but because it was *in facto antiquo*, and it was not known who was of kin to the said person who granted the said reversion, therefore the defender was ordained to condescend who was apparent heir to him, who ought to have been summoned; but this decides not the doubt arising on the 27th act, 5th Parl. James III. whether the order of redemption ought to be used against that person or not, or if it suffice that the singular successor only was warned by the order; for this decision was only for this citation to the summons of declarator; for albeit that was not now questioned, yet many of the LORDS were of opinion, that the order needed not to be used against the apparent heir's foresaids, but only the declarator; but it would appear, that if the order needs not to be used against him, no more the declarator; and sicklike if he be necessary to be cited to the declarator, far more to the order.

Act. ———.

Alt. *Mowat.*

Clerk, *Hay.*

Durie, p. 527.

S E C T. XV.

Citation in Declarator of Escheat.

1603. *February.* WATSON *against* TENANTS.

A MAN in Aberdeen being put to the horn, his escheat and liferent is disposed to one Watson, who, after general declarator obtained by him, made warning to certain of the rebel's tenants to remove. They excepted, that no process should be granted, because they were tenants to the master, who was heritably infeft, and was not called. It was *answered*, That he being rebel, and, by his remaining year and day at the horn, the pursuer having obtained the gift of his liferent and declarator thereupon, in effect, he was his author, and so needed not to be called. THE LORDS repelled the exception, and found he needed not to call the rebel.—Thereafter Mr Robert Paip. compeared, and *alleged* that the tenants of these lands could not be removed at the pursuer's instance, because the said Mr Robert was heritably infeft in the saids lands; and so the pursuer, not being infeft, could have no action for removing the tenants, or apprehending the possession of the said lands. It was *answered*, If any infeftment

No 57.

The donatar to a rebel's liferent having obtained general declarator, the LORDS found that he may warn tenants to remove without necessity of calling the rebel.