

No. 76.

1636. *January 27.* HAMILTON *against* The EARL of BUCCLEUCH.

Francis Hamilton pursuing a special declarator of the mails of the lands of _____ pertaining to Robert Elliot, intromitted with by the Earl of Buccleuch; and he answering, that he being superior of the said lands to the said Robert, and the said Robert being year and day at the Horn unrelaxed, the same pertains to him by his said right of superiority;—and the other answering, that he ought to have done diligence to have obtained declarator upon his liferent as superior; for albeit he might have right, if he had pursued therefore, yet he could not intromit therewith *brevi manu*, nor stay the King's donatar, who claims as single escheat, the duties owing the time of the horning;—and the defender answering, *frustra petitur, quod mox est restituendum*; for whenever he intents declarator therefore, he will evict the same, and force him to render the same back again;—the Lords repelled the allegiance, for they found, that the superior could not hinder this special declarator, at the King's donatar's instance, except that he had intended action and declarator thereon.

Act. Craig. & Hart.

Alt. Nicolson.

Clerk, Gibson.

Durie, p. 792.

No. 77.

1636. *July 3.* MAGISTRATES of EDINBURGH *against* JOHNSTON.

The Provost and Bailies of Edinburgh being charged to enter James Johnston to certain tenements in Leith, as heir to his father, they suspend, and offer a precept, containing a reservation of all the privileges which the Town of Edinburgh craves over the inhabitants of Leith; which the charger refused to accept but conform to the old style. The Lords ordained them to enter the vassal conform to the old infestment; but in the decret upon the said suspension, it is declared, that the entry of the said vassal shall be but prejudice of the superior's right *prout de jure*.

Fol. Dic. v. 2. p. 410. Auchinleck MS. p. 222.

No. 78.

1667. *July 4.* GEORGE SCHINE *against* JAMES CHRISTIE.

George Schine having adjudged an annual-rent, and having charged James Christie, his superior, to receive him, he suspends, and alleges he had apprised the same lands before, and that his author was only infest base, never clad with possession. The Lords repelled the defence, *hoc loco*, and ordained him to infest, reserving his own right, as accords.

Stair, v. 1. p. 469.