

DELINQUENCY.

S E C T. I.

Parricide.

1674. February 3. GEORGE OLIPHANT *against* PATRICK OLIPHANT.

MR. JAMES OLIPHANT having slain his mother, and being convened before the Justices for that crime, he was decerned fugitive, and denounced. Mr George Oliphant, his brother, pursues a declarator upon the 220th act, Parliament 1594, declaring, That murderers of their parents, and their posterity *in linea recta*, shall be disinherited, and the heritage shall pertain to the next collateral and nearest of blood, so that Mr James the murderer ought to be disinherited in his right, and his right declared void, and Mr George his brother might be found heir to his father's estate. It was *alleged* for the defender, That the libel is not relevant; because, by the statute, it is expressly required, that the murderer be convict by the inquest; and his being declared fugitive cannot legally prove the crime, neither can it reach any further than the escheat and liferent of the denounced. It was *answered*, That there is no reason that the murderer should have advantage by his flight, but all having been done against him that law could do, it is equivalent, seeing the crime was notour, as if the murderer had died immediately after the act, and there is no reason that thereby he should escape.

THE LORDS found, that seeing the statute is *stricti juris*, it could not be extended, unless the murderer had been convict.

Fol. Dic. v. 1. p. 232. Stair, v. 2. p. 261.

** Gosford reports the same case :

IN a reduction at the instance of the said Mr George, upon the 220th act of Parliament 14th, K. Ja. 6. to hear and see it found, that Sir James Oliphant

No 1.

An heir was found not to be excluded from his father's heritage, because he was declared fugitive for murdering his mother.

No 1. having committed the crime of parricide, in killing of his mother, all his heirs *in recta linea* were incapable to succeed to his estate, and that the same should go to the next collateral heir, and nearest of blood, and so belongs to the pursuer, who was brother to the said Sir James, who ought to be preferred to all the heirs of Sir James *in recta linea*. It was *alleged* for Mr Patrick, and the creditors of the said Sir James, and of his eldest son, who was heir of the said estate, that the declarator could not be sustained, because, by the foresaid act of Parliament, whereupon his declarator is founded, it is to take place only in favour of the collateral line, where the committer of parricide was convicted by an assize, whereas no such thing here can be alleged, the said Sir James never having compeared, but being denounced to the horn for not compearing to underlye the law. It was *replied*, That his being denounced for not compearing to underlye the law was equivalent to the verdict of an assize, and ought to operate the same effect, otherwise it should be in the power of all guilty of the said crime to elide the foresaid act of Parliament, by their withdrawing, which is against all reason, and the meaning of the act of Parliament. It was *duplicated*, That Sir James being long since dead, and his creditors infeft in his estate for their security, they cannot be comprehended under the penalty of the act of Parliament, unless it could be subsumed *in terminis*, that Sir James was convicted before he died, and *in pœnalibus et odiosis*; the same cannot be supplied by equipollency or presumptions, but the declarator must subsume in the precise terms and words of the act.—THE LORDS did sustain the defence; and fand, that the declarator being of so high a nature as to disinherit all that were to succeed *in linea recta*, it ought to be libelled in the express terms of the act of Parliament, which is a penal statute; and that Sir James being denounced to the horn, did thereby only escheat his moveables or liferent, but could not, for non-compearance, forefault his lands and inheritance for himself and his heirs of line: As likewise found, that this pursuer being now, by the death of the heirs of line, the next and only heir that could succeed, that this declarator was only sought by him that he might frustrate all the creditors of Sir James, and his eldest son Mr James, which was most unfavourable, and therefore they assilzied from the declarator.

Gosford, MS. No 683.