

No 18.

cese. The LORDS repelled the defence, and would not allow the defenders to quarrel their own right. This decision is observed a little differently by Lord Harcarse.

Fol. Dic. v. 2. p. 82. P. Falconer. Fountainhall. Harcarse.

* * * P. Falconer's report of this case is No 3, p. 2496., *voce* COMMUNITY; Fountainhall and Harcarse No 67, p. 7836., *voce* JUS TERTII.

1687. *January 12.* DUKE HAMILTON *against* COUNTESS OF CALLENDAR.

No 19.

A SUPERIOR pursuing a declarator of non-entry against a Lady liferentrix, though he, as a near friend, was a consentor in her contract of marriage; and at his instance execution was to pass, and therefore it seemed his duty to have seen her infest; yet the LORDS repelled the defence, and found the lands in non-entry: But this being stopped and heard again, the LORDS, upon another ground, found the decret of declarator null, viz. because it being libelled, that it fell by the death of the last fiar, his heir of line was not called.

Fol. Dic. v. 2. p. 82. Fountainhall. Harcarse.

* * * Fountainhall's report of this case is No 70, p. 2211, *voce* CITATION; and Harcarse's, and Sir P. Home's No 38, p. 9323, *voce* NON-ENTRY.

1710. *February 10.*

HUGH WALLACE of Ingliston *against* The CREDITORS of SPOT.

No 20.

A creditor at whose instance his debtor was denounced, having consented to his relaxation, was not allowed to quarrel the same upon account of any nullity or informality, whatever a third party might do.

IN the ranking of Spot's Creditors contained in Lord Alexander Hay's back-bond to the Exchequer, upon his getting the gift of the common debtor's escheat, Ingliston craved preference for the debt in the horning upon which the escheat fell, in the terms of the act of Parliament.

Alleged for the other creditors; No respect can be had to Ingliston's horning, because the rebel was duly relaxed before the casualty fell; and therefore the gift of escheat must be understood to have proceeded upon denunciation at the instance of other creditors.

Answered for Ingliston; The relaxation is null by the act 75. Parl. 6. Ja. VI., being executed at the cross of Edinburgh, albeit the rebel was denounced at Haddington, where his lands lay. Ingliston's consent to relaxation imports only, that *per eum non stetit*, if Spot was not lawfully relaxed; which not being done, the relaxation and consent fall of course.

THE LORDS found Ingliston's consent to the relaxation relevant to exclude him *personali objectione* from quarrelling upon the account of any nullity or informality, whatever a third party might do.

Fol. Dic. v. 2. p. 81. Forbes, p. 398.