

No 17. parties, even for the terms intervening, after the general declarator, and before the special citation.

A& Mowat.

Alt. —

Fol. Dic. v. 1. p. 113. Durie, p. 336.

* * The same case is observed by Spottiswood :

A GENERAL declarator puts not the rebel's tenants in *mala fide* to pay their farms to him, found in a special declarator pursued by Cleghorn younger against his father's tenants, who alleged that they had paid *bona fide* their farms to his father the rebel, as they were wont to do, and that before the mention of the pursuer's special declarator : Which exception was sustained.

Spottiswood, p. 99.

1628. December 9.

MACKIE against DUMBAR.

No 18.
A relict having no direct action against her husband's debtors, unless confirmed, it was found unwarrantable to pay her a third without sentence; and the debtors were obliged to pay the whole, notwithstanding, to the executor.

IN an action Mackie against Dunbar, the executors of a defunct pursuing the intromitters with the goods and gear of another defunct, for payment to them of a debt owing by that defunct to him, to whom the pursuers were executors, and they *alleging*, That they had paid the third of that debt to the relict of the defunct, to whom they were executors; for the which they craved defalcation : This allegation was repelled, and no defalcation was admitted for the relict's third, seeing no sentence was obtained by the relict against them therefor, without which they could not have been compelled to pay the same, seeing the debtor remains only obliged to the executor, and the executor to the relict, in those things which she hath not in possession in her own hands, and the relict hath her direct action against the executors, and not against the debtors to her husband. See EXECUTOR.

Fol. Dic. v. 1. p. 113. Durie, p. 407.

1661. December 14.

HOMES against JOHN BONNAR.

No 19.
A debtor having transacted with the supposed creditor, and obtained his discharge, his *bona fides* was found relevant only for what was truly paid.

MARY and — Homes, as donatars to the escheat, and liferent, of umquhile John Home, pursued John Bonnar, for count, reckoning, and payment of the sum of 16,000 merks due to the rebel, for the price of a house. The defender *alleged* absolutor, because he had *bona fide* made count, reckoning, and payment to Mr Alexander Home, assignee constituted by the rebel, before any citation or diligence done against him, to put him in *mala fide* so to do, and produced the assignee's discharge, bearing, that the defender had made count with