

No 57. the said Mr Robert had, it was granted by the rebel after his declarator; and so the donatar, having obtained declarator, could not be prejudged thereby. In respect whereof the Lords repelled the allegiance.

Fol. Dic. v. 1. p. 137. Haddington, MS. No 678.

1609. December 7. JOHN JOHNSTON *against* WILLIAM NAPIER.

No 58.
The heirs and executors of a defunct rebel must be called to a special declarator; but if they concur without citation, it will be sufficient.

MR. JOHN JOHNSTON donatar to the escheat of Nicol Uddart pursued William Napier to hear and see a decret-arbitral pronounced betwixt the saids Nicol and William reduced. It was *alleged*, That no process should be granted, because the pursuer had not libelled, that he had obtained declarator upon his gift; which allegiance was found relevant, while it was taken away by a reply, that he had obtained declarator, which was produced in process. Thereafter it was *alleged*, That no process should be granted, because all parties having interest were not called, viz. the heir, the relict, and the bairns of the said umquhile Nicol, who had right to his goods. It was *answered*, That his heir and relict were called to the declarator, it was not necessary to call any others. THE LORDS found it was necessary to call the bairns, who would have fallen executors: And thereafter the pursuer offering to cause them concur, the LORDS sustained the concurrence, he producing a special mandate.

Fol. Dic. v. 1. p. 137. Haddington, MS. No. 1685.

1610. January 13. LAIRD OF PRESTON *against* ARTHUR HAMILTON.

No 59.

A DONATAR having obtained a general declarator, thereafter calling a debtor to the rebel to make arrested goods furthcoming, needs not summon the rebel, because his preceding declarator has transferred the rebel's whole right in the donatar's person.

Fol. Dic. v. 1. p. 137. Haddington, MS. No 1730.

1610. May 31. GIBSON *against* LIBBERTON.

No 60.
In a declarator of a dead man's escheat, not only the wife and children must be called, but the heir, because of his heirship goods.

A DONATAR taking declarator of the escheat of a defunct, will get no process against the heir and relict, if there were executors confirmed before the intending of his cause, in case he have neither called the executors, nor the defunct's hail bairns, who might have been his executors. A horning and gift of escheat following thereupon will not be decerned null upon an exception in the declarator, that the defender offers him to prove that the debt was paid before the denunciation, because that must bide reduction. *See ESCHEAT.*

Fol. Dic. v. 1. p. 136. Haddington, MS. No 1873.