

No 16.
it, the Lords
found no ne-
cessity for a
declarator of
redemption.

He *alleges*, That the annualrent was redeemed by her father. It was *replied*, That no declarator was obtained against the redemption. THE LORDS found no necessity of a declarator in this case.

Fol. Dic. v. 1. p. 229. Aucbinleck. MS. p. 183.

No 17.

1673. July 25. MURRAY *against* The TUTOR of STORMOUNT.

BY a contract of wadset, the wadsetter being liable to compt for the excrescence of the duties more than should satisfy the annualrent ;

THE LORDS, in a process for mails and duties, found the exception relevant, that the pursuer was satisfied of the sum upon the wadset, by his intromission, without declarator.

Fol. Dic. v. 1. p. 229. Dirleton, No 176. p. 71.

No 18.

Though a gift of forfeiture pronounced in Parliament need no declarator, there can be no action upon such gift, without declarator, where the forfeiture is in virtue of a sentence before the court of justiciary.

1683. March. LORD LIVINGSTON *against* ROGER GORDON of Troquhen.

IN an action of mails and duties, at the instance of a donatar of forfeiture, it was *alleged* for the defender, No process till the gift be declared.

Answered : Gifts of forfeiture pronounced in Parliament need no declarator ; and by a late act of Parliament it is declared, That forfeitures in absence before the justice court, shall be in the same case as if they had been led in Parliament.

Replied : The design of the late act was only to make forfeitures in absence before the Justices equivalent to forfeiture where the party is present ; and as gifts of forfeiture where the party is present, have always required to be completed by declarator, that can be no less necessary to gifts of forfeiture in absence. And Hope, in his Form of Process, and likewise Craig, are clear, that where forfeiture passes by act of adjournal, the gift requires declarator.

‘ THE LORDS found declarator ought to be raised incidentally, and thereafter the pursuer might insist in his process ;’ although it was contended, that seeing the Lords of Session were not competent Judges to any nullity or informality of a criminal process, they could not be proper Judges to the declarator.

Fol. Dic. v. 1. p. 229. Harcarse, (FORFEITURE.) No 491. p. 135.

Irritancy, whether it requires declarator ; *See* IRRITANCY.

See Ramsay *against* Mackison, 5th March 1624, Durie, p. 117. *voce* ESCHEAT.

Touch *against* Hume, 9th March 1624, Durie, p. 119. *voce* ESCHEAT.

See ESCHEAT.—*See* APPENDIX.