

1618. *January 10.* HIRPET *against* SCOT.

No 42.

IN an action of declarator of bastardy, James Hirpet *contra* Gabriel Scot, THE LORDS found no necessity to summon the nearest of kin, but let them compare for their interest; and, in this same case, they found an exception of tatrix, *habitus et reputatus* lawful, relevant, in respect Gabriel Scot, who was alleged bastard, died being 50 years of age; and found no necessity to allege, that his father and mother were married after so long a time.

Fol. Dic. v. 1. p. 135. Kerse, MS. Fol. 143.

1679. *December 11.* SOMERVEL *against* STAYNS.

No 43.

JAMES SOMERVEL having obtained a gift of bastardy of Janet Stayns, pursues a declarator thereof against William Stayns and Robert Handside intrmitters with the bastard's goods, libelling, That the defunct was reputed bastard, during her life. The defender *alleged* no process, because the summons bears not the names of the father and mother of the alleged bastard. *2do*, The lawful contradictor is not called, *viz.* That person who would be heir to the defunct, if she were not bastard. The pursuer *answered*, That he doth now condescend upon the father and mother; and that he had cited all parties having interest at the market-cross; and bastards have no *agnates* on the father's side; and their *cognates* on the mother's side cannot succeed.

In a declarator of bastardy, a general citation at the market-cross of all parties having interest is sufficient, unless particular persons be named who would succeed, if the defunct were not proven bastard. These in that case must be cited *cum processu*.

THE LORDS sustained the declarator with the condescence, and found that the general citation was sufficient, unless particular persons were named who would succeed, if the defunct were not proven bastard; and in case such were named, ordained the summons to be continued against these persons, and they cited thereupon.

Fol. Dic. v. 1. p. 135. Stair, v. 2. p. 720.

SECT. XI.

Citation in Declarator of Property.

1633. *December 21.* L. WEMYSS *against* STUART.

No 44.

THERE being mutual actions of molestation intended betwixt the said parties, before the Sheriff of Perth, which were, by consent of parties, advocated to the Lords;

Declarator of property may be pursued.