

No 5.

On the 29th March 1707, Lord Kincardine gave in a protestation for remeid of law against the foresaid interlocutor to the Queen and Parliament, and after the union to their next competent judicatory for determining such appeals. But the LORDS finding some indecent expressions, and matters of fact wrong narrated, they refused to admit it; whereupon he presented another rectified in these particulars, which the LORDS allowed the clerk to take in, but not to insert in the decret, seeing the article in the claim of right speaks of sentences, but not of interlocutors; though our Parliament, in Sir Thomas Dalziel of Bin's case, against the Heiress of Caldwell, admitted an appeal from an interlocutor.

THE LORDS would not determine whether appeals now to the Parliament of Great Britain are legal or not; for our article could have no such meaning nor prospect; and the House of Commons have long debated if the Peers have such a jurisdiction and power, but left it wholly undecided and entire. And some thought Broomhall might continue his possession of the title as Earl of Kincardine, ay till the Queen accepted of the resignation on the last Earl's procuratory, and that he could not be fully divested till then.

Fol. Dic. v. 1. p. 209. Fountainball, v. 2. p. 367.

No 6.

Found that precepts of sasine became void by the death of the granter, whether issued from the chancery, or by subjects superior.

1716. July 4.

JOHNSTON of Corehead, *against* JOHNSTON of Newton.

In a process of reduction and improbation, and also a declarator of non-entry, at the instance of Corehead against Newton his vassal, the title produced by the pursuer being a charter under the Great Seal in anno 1648, with a precept out of the Chancery that same year, but without any infestment till the year 1714, that Corehead is served heir to his grand-father, the obtainer of the charter; and, upon this general service, as giving right to the precept of sasine, having infest himself upon the act of Parliament 1693, giving force to precepts of sasine after the granter and receiver's death.

Compearance was made for Newton's creditors, who *objected* against the pursuer's title: That the act 1693 concerns only procuratories of resignation and precepts of sasine granted by subjects among themselves; and that, both from the words and intent of the act, and that the words being (considering that procuratories of resignation and precepts of sasine became void by the death of granters, as well as by the death of those in whose favours they were granted) granters here, is not applicable in stile to precepts issued forth of the Chancery, and then it was not the intent of this act to derogate from the rules in Exchequer.

Answered for the pursuer: That the act 1693 makes no distinction betwixt precepts of sasine by subjects, and those by the sovereign; but statutes in general, without any exception, unless of precepts of *clare constat*; and, since the law has not distinguished, no person is warranted to make a difference,

2do, The reason of the law is full stronger in precepts out of the Chancery than in the other case, the reason expressed being for preventing unnecessary charges in renewing of precepts: Now, this holds strongest in the case of precepts by the Crown, since it is very unreasonable, that, where a party has paid a full composition for obtaining a charter, and precept upon resignation, if he die before the precept be executed, his son or grand-son should be obliged to pay a new composition to obtain a new charter.

* THE LORDS found, That sasines given to an heir or assignee, on a precept under the Great Seal, are warranted by the 35th act of the Parliament 1693; and therefore repelled the objection.'

Act. Sir James Nasmyth & Robert Dundas. Alt. Sir Walter Pringle. Clerk, M'Kenzie.
Fol. Dic. v. 1. p. 209. Bruce, No 11. p. 14.

No 6.

 S E C T. III.

Death *pendente processu*;—*in cursu diligentie*.

1626. December 20. YOUNG L. LEY against BLAIR'S RELICT.

IN a declarator of the escheat of umquhile William Blair, rebel, at the instance of the young Laird of Ley, donatar thereto, against his relict, and brothers and sisters;—compared in this process one of the rebel's creditors, and alleged that the horning, whereupon declarator was sought, was null, because the rebel was deceased before the registration of the said horning. This allegation was repelled, and the horning sustained, albeit not registrate till after the rebel's decease, seeing he being lawfully denounced in his lifetime, the party might lawfully registrate the same *quocunque tempore*, as well after the rebel's decease, as before, being done *debito tempore*, within the time required thereto; for his intervening death could not be found a lawful impediment to hinder the user of the horning, to adhibit that solemnity which was required thereto of the law.

No 7.
A horning, whereon denunciation followed during the rebel's life, might have been registered after his death, and escheat might have fallen upon it.

Act. Mowat.

Alt. —.

Clerk, Hay.

Fol. Dic. v. 1. p. 210. Durie, p. 250.