

# ESCHEAT.

## SECT. I.

### Effect of Horning.

1593. *January 1.*

FINLAYSON *against* JACKSON.

ONE Finlayson pursued one Wallace and Jackson as donatar to the escheat of another Jackson, to pay to him the debt for which the said Jackson was put to the horn, and his escheat disposed to this defender. It was *alleged*, that this plea could not be pursued, because he had not intromitted with any of the said party's goods, at the least not so much as could amount to this debt. It was *answered*, that it was provided by the act of Parliament, that the donatar should pay the sum contained in the horning, and so it being voluntary to him to have taken the escheat or not, it being taken and meddled with, he behoved to pay the debt; which answer was found relevant. Farther, it was found in the same cause, that letters of horning being registered, albeit the executions upon the back were not subscribed by the sheriff-clerk, yet the horning is sufficient if the user offer him to prove that the executions are registered.

1593. *December 27.*—Then it was found that this action was grounded upon an act made in *anno* 1579, and was competent against all donatars since that time.

*Fol. Dic. v. 1. p. 253. Haddington, MS. No 264.*

#### No 1.

The donatar was subjected to the debt in the horning upon which the gift was taken, altho' he neither intromitted nor intended declarator, unless he renounced his gift *rebus integris*.

1598. *February.* MASTER of ELPHINGSTON *against* ERSKINE of BAGONIE

#### No 2.

Found as above.

THE Master of Elphingston's son having denounced the laird of Carden for certain sums of money which he was decerned to pay to him, thereafter pur-

No 2. sued John Erskine of ———, who obtained the gift of Carden's escheat upon the said horning, to pay to him the said sums contained in the horning, whereupon he took the escheat conform to the act of Parliament. The summons was found relevant, notwithstanding divers allegances. Thereafter, John Erskine *alleges* that he could not be decerned to pay the said sums, because he had never intromitted with any of the rebel's goods, neither had he obtained any declarator upon the escheat, but was stayed in the declarator by a son of the Master of Elphingston's, and so unless he would cause his son renounce he could not be decerned to pay the sums, seeing it might be he prevailed not in the declarator. The action was interrupted by the decease of the laird of Carden.

*Fol. Dic. v. I. p. 253. Haddington, MS. No 632.*

1603. February 9.

STALKER *against* MURRAY.

No 3.  
Found as  
above.

STALKER having denounced his debtor called Shaw, to the horn, whose escheat was taken by George Murray, Stalker pursued George Murray to make payment of his debt contained in the said horning, whereupon he had taken the said gift of escheat, conform to the act of Parliament 1592, Cap. 145.—It was *excepted* by the donatar, That the summons was not relevant, because he had neither intromitted with the rebel's goods, nor obtained declarator of the escheat; and so, unless the pursuer would either allege, that he had intromitted or obtained declarator, he should have no process, in respect of the 145th act of the said 12th Parliament, seeing a donatar could be in no worse case than the treasurer; and the treasurer would never be holden to pay the rebel's debt, except he intromitted with the goods, and therefore the donatar behoved to have the like benefit.—Notwithstanding whereof, the LORDS repelled the allegance, and found process, unless the donatar would either pay the debt contained in the horning whereupon he took his gift, or else would renounce the said gift.

*Fol. Dic. v. I. p. 253. Haddington, MS. No 676.*

1631. March 15.

FLETCHER *against* KID.

No 4.  
A donatar of  
escheat is not  
allowed to re-  
nounce after  
intromission.  
Neither can  
he defend  
himself a-  
gainst pay-  
ment, by  
pleading the

JANET KID in Dundee being denounced rebel at Fletcher's instance, who was tacksman of the customs, upon general letters raised by the customers, and she being, by virtue thereof, charged to pay a particular sum, contained in the execution against her, and denounced for not payment thereof, the charge being on twelve hours; whereupon one taking her escheat, the said Fletcher pursues the donatar to pay the debt of the horning, whereupon he had taken her escheat; and the donatar alleging the horning to be null, because she was de-