

of the crime, and the apprising of the said lands made and deduced before the summons raised against the said Earl, whilk apprising was *venditio necessaria*, and denudit the said Earl of the said lands, so that he could forfeit no more lands than was in his hands the time of the raising of the summons and giving of sentence.

No 12.

*Maitland, MS. p. 129.*

1598. February. L. of EDMONSTONE against TENANTS of NIDDRY.

THE Laird of Edmonstone pursued the Tenants of Niddry to remove from certain lands of Niddry pertaining to him as donatar to the forfeiture of umquhile Archibald Wauchope of Niddry. It was *alleged* by the Bailie of Niddry, That he would not remove, because he was infest by umquhile Robert Wauchope heritably in the said lands; which was repelled, because the son was not confirmed by the King. Thereafter the Bailie *alleged*, That he could not be removed at the instance of this donatar, because the lands could never fall in forfeiture by Archibald, because he was never infest therein, *neque poterat spes successionis pertinere ad regem per ullius prodicionem, quia nunquam fuerat hæres in spe*, because his father survived him; and so dying before his father, the lands could not forfeit before his decease. It was *answered*, That, by the said Archibald's contract of marriage, umquhile William Wauchope of Niddry, Marshal his gudsher, and Robert Wauchope his father, were obliged to infest the said Archibald in the said lands; and so, by his forfeiture, his right is fallen in the King's hands. His Majesty, by the contract, had sufficient right to the lands, and needed no sasine, being seised by his Crown in all the lands within the realm, and so the disposition made to his donatar was sufficient. To this it was *answered*, That the contract was but *jus ad rem, et jus ad fundandam actionem*, but no real right; so that the donatar had only place by the contract to pursue for infestment. And farther, offered them to prove, that, after the said William's decease, Robert was retoured heir to him in the fee of the said lands, and infest therein; and, by virtue thereof, in possession many years; and so he died last vested and seised, as of fee, in the said lands, long after the said Archibald's decease, therefore would not forfeit by Archibald's fact. It was *duplicated* by Edmonstone, That not only Archibald had right by contract, but also, conform to the said contract, he was seised in the fee of the said lands, and resignation was made thereof in the King's hands; whereupon a charter was granted, which passed the Privy Seal; which allegiance was admitted to probation.

No 13.

As an apparent heir may forfeit *spem successionis*, so resignation being made of lands in favour of a man, and the infestment past the Privy Seal, it was found, upon his committing treason, that the lands were forfeited.

*Fol. Dic. v. 1. p. 313. Haddington, MS. No 633.*