

No 20. relief was found moveable, and to belong to executors, though the principal bond was of a different and heritable tenor.

Fol. Dic. v. I. p. 254. Fountainball, v. I. p. 334.

S E C T. III.

To whom Single Escheat falls.

1542. *May 28.*

ORMISTON, the King's donatar, *against* The BURGH of EDINBURGH.

No 21.

If a man is convicted for slaughter within burgh, his escheat belongs to the burgh; but if he is fugitate for not compearance, his escheat belongs to the King.

GIF ony man committis slauchter within Edinburgh, and beis apprehendit and convict thairfoir, the escheit of his moveabill gudis aucht and sould pertene to the Burgh and communitie of Edinburgh, *ratione criminis commissi, infra burgum*. But gif ony persoun committis slauchter within the samin Burgh, and is fugitive, and denuncit rebell, for non-compearance to underly the law thairfoir, in that cais his escheit aucht and sould pertene to the King, becaus in this cais his escheit falls not be reasoun of crime committit within the Burgh, but be reasoun of his non-compearance.

Fol. Dic. v. I. p. 254. Balfour, (BURROW.) No 43. p. 52.

* * * This case is reported by Sinclair, No 18. p. 2265.

1609. *February 23.*

LAIRD of BAIRFUTES *against* DRUMMOND and MAUCHAN.

No 22.

A husband's *jus mariti* of lands, belonging to his wife which falls under single escheat, was found to belong to the wife's superior, and not to the King.

ARCHIBALD HAMILTON of Bairfutes, as having by gift of my Lord of Lothian, the liferent of sik lands as Agnes Mauchan held of his Lordship, fallen in his hands by the rebellion of Harry Drummond, and his remaining year and day at the horn, pursued for declarator thereof. Compeared Mr John Kerr, donatar to the said Harry's escheat, given to him by the King's Majesty, and being admitted for his interest, *alleged*, That no declarator could be granted to the pursuer upon the Earl of Lothian's gift, because nothing could fall to the Earl, but the liferent of his vassal who was not at the horn, and the rebellion of her husband could not make her liferent fall, because he was not vassal to the Earl; and if she was either divorced, or her husband died before her, neither his

disposition of her liferent nor his rebellion could any longer prejudice her of her liferent, but the right thereof would return to herself; and, if her husband outlived her, the right of her liferent lands would expire with herself, and so neither her liferent, nor her husband's liferent, could fall to the Earl of Lothian her superior, by her husband's rebellion, she not being at the horn; but whatever fell by her husband's horning, behoved to pertain to the King and his donatar. It was *answered*, That nothing could fall to the King's donatar, because he could not pretend right to their liferent, because neither her husband nor herself held these lands of the King, as the superior thereof, neither could the King's donatar have right to this liferent by single escheat, because it fell not under single escheat. The matter being reasoned among the Lords, it was considered, that he who was year and day at the horn lost both escheat and liferent; and therefore it was no reason that he should bruike that which might fall either under escheat or liferent, and next, because the liferent controverted, was not holden of the King, his donatar could not have right to it as liferent, neither could he have right to it as single escheat, because it was not moveable, and therefore they found the exception not competent to the King's donatar. In respect whereof, sustained the pursuer's summons.

Fol. Dic. v. 1. p. 254. Haddington, MS. No 1579.

No 22.

1628. March 28.

FLETCHER *against* IRVINE.

IN a declarator of escheat pursued by Fletcher against Mr James Irvine, the Bishop of St Andrews compearing and *alleged*, that the said rebel's escheat pertained to him, and not to the King's donatar, seeing the said rebel dwelt in the lands of _____, which are within his regality. THE LORDS repelled this allegiance, for albeit the rebel (he being a minister) had his dwelling in his manse beside his parish kirk, the lands whereof, and whereupon his manse was builded, lay within the regality of St Andrews; yet they found that the said manse could not be reputed to be holden of the bishoprick, but that manses pertaining to ministers, being given to them by the King and Estates, by laws and acts of Parliament, the same ceased to be of any private holding, and could have acknowledgement of no superior but the King; and consequently the LORDS found, that the stipend due to the minister that year of his rebellion, albeit the same was paid out of the teinds of that lands holden of the Bishop, pertained to the King's donatar, because the debts owing to the rebel follow his dwelling-place as *nomina debitorum* do; likeas the sum owing to him for reparation of the manse, was also found to be in the like case. See MANSE.

No 23.
The single escheat of a minister falls to the King, and not to the Lord of regality, tho' the manse be within the regality.

Act. Hope.

Alt. Aiton.

Clerk, Hay.

Fol. Dic. v. 1. p. 254. Durie, p. 373.