

No 5.

THE LORDS found the defence relevant, only *scripto* of the denouncer.

The defender further *alleged* the horning was null, as being upon a null decret, and falling therewith in consequence.

THE LORDS repelled the defence, and found, though the decret were null through informality, yet the horning would not be annulled, but the party was in contempt, in not suspending *debito tempore*.

Compearance was also made for Mr William Lauder, who *alleged* he had disposition from the rebel, before year and day run. THE LORDS found this allegiance not relevant, unless it were alleged to be for a just debt, before the denunciation. It was further *alleged* for Mr William, That the pursuer granted back-bond to the treasurer to employ the gift, by his appointment, and he offered to satisfy the donatar's debt, and the whole expense of the gift.

THE LORDS found this not relevant, without a second gift, or declaration from the treasurer.

Fol. Dic. v. I. p. 252. Stair, v. I. p. 175.

S E C T. II.

What falls under Single, what under Liferent Escheats.

1623. February 26. SIBBALD against L. LETHENTIE and L. CLUNIE.

No 6.

The sub-vassal's liferent escheat falling to the vassal, is carried as a part of the vassal's single escheat when the vassal afterwards becomes rebel; but the vassal's liferent escheat falling, the donatar there- of is entitled to the liferent escheat of the sub-vassal falling thereaf- ter.

THE Laird of Clunie holding the lands of Clunie of the Bishop of Dunkeld, disposes the same, by two charters, to the Laird of Lethentie; the one to be holden of himself, the other of the superior, and he is infeft to be holden of Clunie; thereafter they are both at the horn, and remain year and day thereat, whereby Lethentie's liferent holden of Clunie of the said lands of Clunie falls in the Laird of Clunie's hands his superior, and the same falls in the Bishop's hands as Clunie's superior, by Clunie's liferent, through his rebellion year and day. The gift of Clunie's escheat, after his lying at the horn year and day, is gifted by the King to Mr Patrick Sibbald, who obtained a general declarator, and thereafter seeks and pursues for a special declarator, to have the liferent right of these lands adjudged to pertain to him by the simple escheat, as coming under the same, as a casualty belonging to the King, in respect Clunie's vassal, viz. Lethentie's liferent falling to Clunie, Clunie's rebellion made Lethentie's liferent to pertain to the King, as a part of the casualty of Clunie's simple escheat; and so he contended, that Clunie's superior could not pretend right to

the same, as falling to him by Clunie's rebellion year and day. THE LORDS found, that Lethentie's liferent of these lands, which, by his being year and day at the horn, fell in Clunie's hands who was his superior; but Clunie's rebellion fell not to the King, as a part and casualty of the simple escheat; but found, that in respect Clunie himself was year and day at the horn, by the space of three months before his vassal Lethentie's rebellion year and day expired, that therefore by Clunie's being year and day at the horn before Lethentie his vassal, the liferent of the lands pertained to the Bishop, and was acquired to him before it could be acclaimed as a casualty of Clunie's single escheat, and after Clunie's liferent fell to the Bishop, whatever could accresce to Clunie by the continuing and remaining of Clunie's vassal, when year and day ran, and so when it was by the expiring of the year acquired by Clunie, the same accresced to the Bishop, in whose hands Clunie's liferent had fallen before, and consequently the Bishop having confirmed the said Lethentie's right of the lands after his liferent, and Clunie's was acquired to him by their fore-said rebellion, albeit the said confirmation was done after the gift granted to Sibbald by the King, of Clunie's escheat, and after the general declarator recovered thereupon, yet being before any special declarator obtained by the King's donatar, the same was found, by the LORDS, sufficient to exclude the King's donatar from all right to that liferent acclaimed, as it would have excluded Clunie's self, if he had sought the same.

Act. Hope & M'Gill.

Alt. Lermonth & Stuart.

Clerk, Hay.

Fol. Dic. v. 1. p. 253. Durie, p. 51.

1624. March 5.

RAMSAY against MACKISON.

IN an action pursued by John Ramsay *contra* Mackison, for payment of the sum of 500 merks, conform to the defender's obligation made thereupon, the LORDS found, that this pursuer had no action subsisting in his person, to pursue for this debt, because the pursuer was denounced rebel, and his escheat gifted, and declared generally: Likeas the donatar had intended special declarator for this same sum, against this same defender; which being called, albeit in that special declarator the donatar past from this excipient, yet the intending of the special declarator so denuded the rebel, that no right remained in his person, whereupon he might convene the defender, but the same was only competent to the donatar. This allegiance was found relevant to exclude the creditor's pursuit; for the LORDS found, that albeit it was *jus tertii*, which was alleged, yet that it was competent to the excipient, sicklike as if the pursuer had been denuded by an assignation, which had been intimate; and, that the once intending of a special declarator against him, albeit thereafter past from, was of the like force as the intimation of an assignation.

Act. Aiton.

Alt. Hope.

Durie, p. 117.

No 7.
The intending of a special declarator, altho' afterwards past from, found entirely to denude the rebel.