

1622. *July 5.*DONATAR to the E. TULLIBARDINE'S Escheat *against* ADINSTOUN.

No 57.

After a vassal has been year and day at the horn, his liferent escheat is as fully established in the superior's person as if he had been infest on a right derived from the vassal; but every right granted by the vassal during the currency of year and day, will be preferred to the donatar's gift of liferent escheat.

IN an action of declarator of the Earl of Tullibardine's liferent, pursued by a donatar, and the donatar's assignee, who was a creditor to the rebel, the LORDS repelled the allegiance which was proponed against the declarator by Thomas Adinstoun, creditor to the rebel, founded upon the comprising led against the rebel, of the lands desired to be declared, and public infestment granted by the King's Majesty to him of the lands comprised, and diligence by pursuits intented thereupon, which was good and lawful possession, as the excipient alleged; which exception and infestment foresaid, right and diligence therein contained, the LORDS found could not take away the liferent which pertained to the King, and fell by the rebellion, and by lying thereat year and day, and which was gifted to the donatar before the comprising: And albeit no more diligence was done by the donatar before the deducing of the comprising, yet the LORDS found that the liferent pertained to the King, and the compriser's infestment was affected with that condition of his debtor's liferent, whereof the King nor his donatar were not prejudged by the subsequent infestment granted by the King, which proceeded upon the comprising, as said is; and specially, seeing the right to the liferent and gift thereof was devolved upon another creditor of the rebel's, who was made assignee thereto by the donatar, and which assignee purchased the same for a further security of certain lands bought by him from the rebel, and to the which lands bought by him, he restricted the declarator; which assignee was found to be in a better case than the donatar, who was alleged to have procured the gift to the rebel's use, and which was not respected, it not being alleged that the assignee was partaker of that fraud.

Act. *Hope & Nicolson.*Act. *Peebles & Aiton.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 256. Durie, p. 29.*

* * * The same case is reported by Kerse, No 54. p. 3658.

1623. *December 3.*HERRIS *against* GLENDINNING.

No 58.

Found as above.

ONE Janet HERRIS having certain lands dispooned to her by Glendinning of Parton. by his charter of alienation made to her of the same, and having served inhibition thereupon, no sasine being taken of the lands for the space of fifteen years after the charter; and after sasine, she pursuing removing, the pursuit was elided, because after the charter, and before the sasine, Parton who was her author, was rebel, and remained so, before she took sasine, year and day at the horn, whereby his liferent of these lands fell in the King's hands; likeas the said liferent being given to a donatar, declarator was obtained thereupon,

and the donatar acquired possession before the sasine, which was found relevant to exclude the pursuer's right; seeing the charter made to her, albeit before the rebellion, and albeit inhibition was execute against her author, although before his rebellion, yet the same remained in the naked terms of a personal obligation, so long as sasine was not taken thereupon, and gave not the pursuer any real right to the land before the sasine, betwixt the which, and the charter, her author's rebellion intervening, who was not effectually denuded, by the naked charter, but who remained in the real right of the land, gave right thereof to the King for his lifetime, and she had only personal action against himself and his heirs; for, in this case, the King's donatar was in as good estate as any other person, who had acquired a real right of the land after the pursuer's charter, and before her sasine, and who would have been preferred to the pursuer; and the inhibition preceding could not derogate from the King's right acquired by the rebellion.

No 58.

Act. *Cunningham.*Alt. *Belshe.*Clerk. *Gibson.**Fol. Dic. v. 1. p. 256. Durie, p. 85.*1630. *June 19.*NISBET *against* LADY ABERCORN.

No 59.

A CREDITOR of a vassal having arrested after year and day, and obtained decret of furthcoming before gift or declarator of the liferent escheat, was preferred to the superior's donatar because of his diligence.

*Fol. Dic. v. 1. p. 256. Durie.**** See This case, Section 5. *b. t.* No 38. p. 3643.1631. *February 16.*LO. CRANSTON *against* SCOT.

LO. CRANSTON, superior of the lands of Salwoodsheil, pursuing declarator of liferent against Sir John Scot, as son and apparent heir to his father, who was the pursuer's vassal, wherein Andrew Scot compearing, who had comprised these lands, being a creditor to Sir John, *alleged*, That he being creditor to him before he was rebel, and having denounced the lands to be comprised, albeit after he was rebel, yet before he was rebel year and day, and thereafter having completed the comprising, and charged the superior to enter him, that ought to stay the declarator. THE LORDS repelled this allegiance, and found that his comprising, deduced and perfected after the debtor was rebel year and day, and a charge following thereupon, could not prejudge the superior of the casualty of the liferent of the apparent heir of the vassal; in which casualties, the LORDS found, that the superior was not hurt by the foresaid denunciation.

No 60.

Found in conformity with
No 57. p.
3660.