

in him as assignee, the LORDS found the suspension and act of caution might be transferred, without any new charge, being all done *inter vivos*; and that there needed no other new charge, at the assignee's instance, but that the cautioner found in the suspension stood still bound: Likeas there being a horning produced, whereby Lord Kilmaers was rebel before the assignation made by him, and so remaining rebel then, as yet unrelaxed, it was *alleged*, That he could not make an assignation to prejudice creditors, as this was. This allegiance was repelled, because the LORDS considered that this was an assignation of an heritable right which the rebel might make, and that the act whereupon the allegiance was proponed, should be understood of moveable goods, and therefore the LORDS sustained the action at the assignee's instance, notwithstanding of the cedent's being then rebel. See LITIGIOUS.

No 31.

Act. *Dauling.*Alt. *Belsbes.*Clerk, *Scot.**Fol. Dic. v. 1. p. 254. Durie, p. 60.*1624. *March 6.* DOUGLAS *against* L. EAST-NISBET.

WILLIAM DOUGLAS being donatar to the escheat and liferent of John-Stuart of Coldingham, and thereupon having obtained a declarator, intents action against L. East-Nisbet, for a declarator of East-Nisbet's liferent of the lands of East-Nisbet, as holden of John Stuart, and in which John Stuart's hands the said liferent was fallen, through the said L. East-Nisbet's remaining rebel year and day; the which liferent was acclaimed by the pursuer, as becoming in John Stuart's place, wherein he was surrogate by the said gift and declarator, and so whereby he might claim John Stuart's vassals liferent, as the said John Stuart might have done himself. This action was sustained by the LORDS, and they found that the same neither needed to abide continuation, nor any probation, that L. East-Nisbet was infeft in the lands holden of John Stuart, thereby to prove him to be his vassal, but found it sufficient to infer sentence as was desired, the pursuer producing John Stuart's sasine in the lands libelled, without any other probation, seeing if East-Nisbet was not his vassal, he might disclaim him, and that not being done, there was no necessity to produce L. East-Nisbet's own sasine.

No 32.

The liferent escheat of a subject upon which infeftment had not past, was found to fall to the King. See No 34. p. 3639.

1624. *March 9.*—IN the declarator pursued at the instance of William Douglas, as donatar to the liferent of John Stuart, whereof mention is made March 6th 1624, it being *alleged* for the defender in that process, viz. by the Viscount of Ayr, who was a donatar to that same liferent, that no declarator ought to be granted by virtue of the pursuer's gift, because John Stuart, for whose liferent the parties controverted, was not year and day vassal to the King, the time of the granting of the gift of his liferent to the pursuer, for his sasine was in December 1622, and the gift

No 32.

is granted to him in September 1623, so that he not being vassal year and day before the gift, albeit he was at the horn before the gift year and day, the liferent could not fall. This allegiance was repelled, for the LORDS found, that albeit there was not a year betwixt the rebel's sasine and the gift of his liferent, yet seeing he had a right in his person, which was of a date more than year and day anterior, and before the said gift, by virtue of which right he might have taken sasine of the lands controverted, at the date of the same right, which was a sufficient title and warrant, by virtue whereof he became potentially vassal to the King, albeit he delayed to take sasine, or if he should yet delay, and had not yet taken sasine, he remaining, and being found at the horn year and day, since that time that he had right, by the which he might have been seased, and so have been actually vassal to the King, and at the horn a year before the gift, albeit not actually seased a year before the same, his liferent thereby pertained to the King, and consequently to the pursuer.

1624. *March 11.*—IN an action mentioned before upon the 6th and 9th of March, of William Douglas, donatar to John Stuart's escheat and liferent, THE LORDS found, that albeit that gift was taken, and given by the thesaurer to his donatar, at the rebel's request and desire, and that the same was expedite the seals upon the rebel's own expenses, and by his moyen obtained, yet seeing the donatar was a true creditor to the rebel, and who insisted in that declarator, to recover payment thereby of his true debt, justly owing by the rebel to him, that the said gift could not be found simulate, notwithstanding that the rebel had procured it by his moyen and charges to the donatar, who was his creditor, which the LORDS found he might lawfully do, even as he might pay his debt to the said donatar; and by that deed the LORDS found, that the donatar could not be prejudged to prosecute the declarator, but sustained the gift and pursuit, and repelled this allegiance, the same being proponed by the Viscount of Ayr, a second donatar, who desired to be preferred to the pursuer, in respect of the said alleged simulation, and was not preferred.

Act. *Craig.*Alt. *Hope et Belshes.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 254. Durie, p. 118. 119.*

1624. *July 3.* MUIRE *against* AHANNAY and E. of GALLOWAY.

No 33.
Found in conformity with
No 30. P.
3636.

IN an action pursued Muire *contra* Ahannay and the E. of Galloway, wherein a donatar to a rebel's liferent escheat, pursuing for the mails and duties of the rebel's lands, after the expiring of year and day, and the defender defending himself with an infestment of the lands granted to him of the same by the rebel, the LORDS found, that that infestment, albeit it was replied and granted by the defender to be true, that the same was made after that the re-