

GIFT OF ESCHEAT.

SECT. I.

Requisites of a Gift of Escheat.

1627. July 17. LYMING, Donatar of WALKER'S Escheat.

No 1.

IN a declarator of escheat of Archibald Walker, at the instance of Thomas Lyming, donatar thereto, the LORDS sustained process upon the gift, albeit it was sealed after the execution of the summons; seeing he produced an instrument, requiring the keepers of the Privy Seal to seal the same *debito tempore*, before the summons; which, for their absence, not being done, they found the instrument supplied it.

Fol. Dic. v. 1. p. 346. Durie, p. 310.

1628. November 20. WESTON against STUART.

No 2.

A DECLARATOR of liferent being sought upon a gift granted at court, and subscribed with the King's own hand there, wherein there was no special mention made of any horning, bearing the rebel to be put to the horn for whatsoever cause proceeding; the LORDS found no declarator could pass upon that gift, wherein no special horning was inserted, albeit the summons of declarator was libelled upon a special horning, which preceded the gift year and day, and which the pursuer produced, and whereto he restricted his gift, as if the same had been inserted specially therein; and which he alleged was sufficient, seeing there was no contrary donatar, and that the King's officers quarrelled not the same, and that it was obtained at court, where the ignorance of that omission is excuseable; and that the donatar is content to pay the debt of that horning produced; notwithstanding whereof no process was found upon that gift, wherein no special cause of rebellion by a special horning was expressed.

Declarator was refused on a gift of escheat, which did not mention a preceding horning; tho' the action of declarator specified the horning.

Act. Burnet.

Alt. —.

Clerk, Gibson.

Fol. Dic. v. 1. p. 346. Durie, p. 397.