

No 37. 1627. July 26. JOHN INGLIS *against* GILBERT WOOD.

TACKS and assignments made *stante rebellione* are null for all years following the declarator of escheat, notwithstanding the said tacks or assignments were made to creditors. See No 36, *supra*.

Fol. Dic. v. 1. p. 555. Kerse, MS. fol. 221.

No 38. 1628. March 19. RAITH, Donatar, *against* L. BUCKIE.

Found in conformity with Lindsay *against* Porteous, No. 30. p. 3354.

A SPECIAL declarator, after a general, of Andrew Meldrum's liferent by Mr James Raith, donatar thereto, against L. Buckie, the defender clothing himself with an heritable right and disposition made of the lands, whereof the liferent was acclaimed in this special declarator, and which was acquired by him from the rebel, before year and day ran after he was denounced rebel, albeit it was granted after he was denounced, yet, being granted before the expiring of the year after his denunciation, and being granted for a true cause of preceding debt, owing to him by the rebel before his rebellion, and he being in real possession of the lands by virtue of his right continually *sinsyne*, the same ought to defend him against this declarator; this allegiance was repelled; and the donatar was found to have right to the lands, during the lifetime of the rebel, notwithstanding of the heritable right made to the excipient for the preceding cause, and notwithstanding of his possession preceding the expiring of year and day.

Act. Lawtie.

Adv. Hope.

Clerk, Gibson.

Fol. Dic. v. 1. p. 555. Durie, p. 364.

No 39. 1629. December 18. L. of CAPRINGTON *against* CUNNINGHAM, &c.

A right of teinds made by a rebel at the horn, although no declarator had yet followed, was sustained to defend a party in a spuilzie, although the right was purchased from the rebel for a great sum, and he

In a spuilzie pursued by Caprington, as donatar to the escheat and liferent of the Lo. Ochiltree, who had right to the teinds of _____, whose liferent being gifted and declared, he, by virtue thereof, pursues a spuilzie, wherein the defender clothing him with the right of the same teinds from the Lo. Ochiltree, and continual possession these nine or ten years bypast, he *alleged*, The same being purchased for great sums of money, ought to defend him, albeit his right was made after the maker was rebel, which, notwithstanding, ought to be maintained, being purchased before the declarator, and so *bona fide* acquired, the rebellion never being intimated, nor made known to the excipient; the allegiance was repelled; and the right made to the party by the rebel, being at the horn at that time, albeit not then declared, was not sustain-

ed to defend him, specially seeing also the action was for spuilzie of years after declarator, obtained upon the rebel's escheat and liferent.

Act. *Advocatus & Cunningham.*

Alt. *Nicolson & Millar.*

Clerk, *Scot.*

Fol. Dic. v. 1. p. 555. Durie, p. 476.

No 39.
had possessed for 10 years, especially because the action was for spuilzie of teinds, of years after declarator.

1631. December 6. L. CONHEATH against L. EARLSTOUN.

CONHEATH being made assignee by Katharine Glendinning to certain goods taken from her by Earlstoun, and pursuing Earlstoun for wrongous intromission therewith, as is noted July 26th, 1631, *voce* PRESCRIPTION, the defender *alleging*, That the cedent was rebel at the same time of the making of that assignation, and stood rebel before the making thereof, and continued rebel yet unrelaxed, so that the assignation is null, specially seeing he has obtained the gift of her escheat, and declarator thereupon, which must liberate him, and prefer him to the assignee; the LORDS found the exception relevant, notwithstanding the assignation bore to be made for onerous causes, and that the same was made before the gift of the cedent's escheat was disposed, and before the intending of any declarator thereupon; and albeit the declarator thereon was recovered since the intending of this pursuit at the assignee's instance; in respect whereof he *replied*, That the exception ought to be repelled; yet the assignee, before the gift was granted, was ever in *bona fide* to take this assignation, notwithstanding of the rebellion, which was never made public, and whereof the assignee was probably ignorant; notwithstanding whereof the donator was preferred, and the exception sustained.

Fol. Dic. v. 1. p. 555. Durie, p. 604.

No 40.
An assignation, though onerous, was found null, being granted by a person after he was denounced rebel, though before gift or declarator of his escheat.

1632. February 2. LINDSAY against NISBET.

IN a special declarator of Helen Nisbet's escheat, it was *alleged*, That the particular goods assigned by the rebel to David Nisbet, her brother, defender, could not come under this declarator; because, the assignation was made by her thereof, albeit after her rebellion, yet before the general declarator, which was lawful for him to accept. THE LORDS repelled the allegiance, seeing the assignation could not prejudice the King's donatar, being made after rebellion, albeit the assignee had not been a conjunct person, specially seeing there was no lawful nor onerous cause qualified, which might sustain the assignation; for, if it were sustained, the King and his donatar would ever be prejudged by such deeds, albeit no creditor proponed the same.

Fol. Dic. v. 1. p. 555. Durie, p. 618.

* * See similar decisions, 20th July 1630, Laird Lee against Porteous, No 12. p. 2182. *voce* CITATION; and 17th June 1712, Ker against Creditors of Harden, No. 22. p. 690. *voce* ARRESTMENT.

No 41.