

he had the sole power of the land, and the whole commodities thereof, during that space; and it was not well compatible to seek the full profits of the lands, as he had done, by recovering of sentences therefor, and also to seek the feu to be annulled, for not payment of the feu-duties; which feu-duties the rebel could not pay, being excluded from the lands by the donatar's right, and which were so in effect, rather liable to be paid by the donatar's self, who either might recover possession of the lands by law, or if the rebel did possess, might comprise the property therefor; and therefore the LORDS found, That the donatar could not in law seek any such action of nullity, for *ubi datur et competit ordinarium remedium ex jure* as here, *non recurritur ad extraordinarium*.

Act. *Advocatus et Nicolson.*

Alt. *Stuart et Craig.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 254. Durie, p. 700.

No 14.

1634. *March 22.* OCHILTREE *against* MILLER.

A DONATAR to a bastard's gift of single escheat, pursuing for payment of a sum owing to the bastard by heritable bond; the LORDS found this heritable bond fell under the gift of single escheat, and that it needed not to be conferred by presentation, there being no sasine, nor by no other manner of gift. *Item*, a bond of L. 100 subscribed by one notary only, was sustained, because it exceeded not that sum; and the LORDS interpreted matters of importance, which require two notaries, to exceed that sum, and not those which extend thereto, and no more.

Clerk, *Scot.*

Fol. Dic. v. 1. p. 253. Durie, p. 717.

No 15.
An heritable bond, on which infertment has not followed, falls under single escheat.

1663. *February 4.* LAIRD PHILLORTH *against* LORD FRAZER.

SIR ALEXANDER FRAZER of Phillorth being in distress for debt, disposed his barony of Cairnbuilg to Robert Frazer of Doors; which lands of Cairnbuilg lye near to Phillorth, and the house thereof was his residence. In the alienation there is a clause conceived to this effect, that it shall not be leisom to the said Robert Frazer of Doors, to alienate the lands during the lifetime of the said Sir Alexander Frazer; and if the said Robert Frazer did in the contrary, he obliged him to pay to the said Sir Alexander the sum L. 10,000 for damage and interest, *ex pacto convento*, and if the said Robert should have ado to sell the said lands after the death of the said Sir Alexander, he obliged him to make offer thereof to the heirs and assignees of the said Sir Alexander, or any person he pleased nominate of the name of Frazer, for L. 38,000. The said Robert Frazer of Doors disposed the said lands to Stanywood, during the life of Sir Alexander

No 16.
Single escheat found to reach a sum due as the liquidation of an obligation not to alienate lands; which sum was found *quoad fiscum*.