

No 65.

fender *duplicated*, That this answer of simulation cannot be found well qualified by this presumption alleged, of the rebel's remaining in possession, without some further qualification of a positive act, which may infer simulation; for although the donatar suffer the rebel to possess, that is not enough to make his gift null, where the same is not truly taken to the rebel's behoof; but notwithstanding of that bruicking by the rebel, the donatar may, when he pleases, claim the benefit of his gift; attour this act of Parliament cannot be constructed to any other sense; as also the same expressly appoints that nullity to be in favours of the creditor, at whose instance the rebel was denounced, and cannot militate for every creditor, as the words of the act in themselves proopt, which cannot be extended. THE LORDS found this allegiance not relevant, in respect of the answer; and found the same reply was competent to be alleged for all creditors, as well as for him, at whose instance the debtor was denounced, and found that there was no necessity to qualify any other circumstance of simulation, except the said retention of possession. See PRESUMPTION.

Act. ———.

Alt. *Gilmore.*Clerk, *Scot.**Fol. Dic. v. 1. p. 521. Durie, p. 843.*

No 66.

1684. *January 23.*NEILSON *against* KENNEDY.

IN a process of special declarator, at the instance of a donatar of single escheat, it was found competent to the defender to plead that the bond was granted by him, more than year and day after the denunciation, and consequently fell not under single escheat, though the gift bore all goods and gear that should belong to the rebel, before his decease; seeing such gifts are restricted to what the rebel shall acquire within year and day; and it was not found *jus tertii* to quarrel the pursuer's want of title.

*Fol. Dic. v. 1. p. 522. Harcarse.**.* This case is No 15. p. 5085. *voce* GIFT OF ESCHEAT.1685. *November 26. & 28.*ARCHBISHOP of ST ANDREW'S *against* The TOWN of GLASGOW.

No 67.

The Magistrates of Glasgow obtained a tack from the Archbishop. The Archbishop charg-

THE Magistrates of Glasgow having got from their Archbishop a nineteen years tack of his parsonage and vicarage teinds, for a grassum of 20,000 merks, and a small tack-duty; the Bishop charged for the grassum.

Alleged for the defenders; *imo*, Their tack is null, as granted after a *conge d'elire* was come from Court for electing the setter Archbishop of St Andrew's; *2do*, The Magistrates, who are but administrators and curators, cannot do