

by the back-bond in favour of the creditors, Mr George having no benefit by it but his own satisfaction; and all being but light presumptions, *presumptio sedit veritati*, Mr George is content to depone that the gift is not to the rebel's behoof, but for satisfaction of debts to himself and several others of William's creditors, at whose desire he took the same.

No 265.

THE LORDS found the back-bond to the Exchequer, and the oath of the donatar, sufficient to elide the presumption of simulation.

Fol. Dic. v. 2 p. 155. Stair, v. 2. p. 239.

1676. December 20.

VEITCH against PALLAT.

No 266.

THE LORDS found, that a rebel contracting debt after rebellion cannot assign in satisfaction of the same any debt due to him; and though the assignee should transact with the debtor of the debt assigned, before a gift and declarator, the donatar will be preferable. *In presentia*.

For Veitch, Lockhart and Hog.

Alt. Cuninghame and Seaton.

Clerk, Gibton.

AND in the same case it was found, that a bond granted after horning, though it did bear that the same was for wines, yet being the rebel's assertion, could not prejudice the King. But it being *alleged*, and offered to be proved, that the said wines were truly furnished before the rebellion, the LORDS found the allegiance relevant to be proved only by the rebel's account-books and by books of entry, and not simply by witnesses, without such adminicles in writ.

THE LORDS likewise found, that the presumption introduced by the act of Parliament, that gifts of escheat are simulate, in respect that the rebel is suffered to possess, is only in that case where the rebel has a visible and considerable estate of lands or tacks, and is in possession of the same: But when the rebel's estate is either not considerable, consisting only of an acre or two, (which was the case in question) or *in nominibus*, and not known to the donatar, so that the donatar had reason not to trouble himself, and to look after either that which was inconsiderable, or which was not known to him, there is no ground to presume that the gift is simulate.

Fol. Dic. v. 2. p. 157. Dirleton, Nos 409, 410, & 411. p. 201.

* * Stair's report of this case is No 91. p. 2874. *voce* COMPETITION.

1707. June 10. SHEIRERS against MURRAY and DALGLEISH.

No 267.

MARY and Sophia Sheirers being infest upon a disposition from Andrew Sheirer, their brother, in some houses lying in Hackerston's wynd, pursue the

In a reduction of a gift of life-ent-escheat, it was found no sic

No. 267.

simulation that the rebel was suffered to continue to possess a house, the rents of which fell under the escheat.

tenants for mails and duties, and to make the rents forthcoming upon these ar-
restments. Compearance is made for Sir Robert Murray, in whose name
James Dalgleish, a creditor of Sheirers, had taken the gift of his single and
liferent escheat; and craved to be preferred, on this ground, that their brother
was registered at the horn before he granted them the disposition and infest-
ment founded on; after which he could do no voluntary deed to the prejudice
of the fisk and creditor who had denounced, though it was in implement of
their bond of provision. Whereupon they repeated a reduction of the gift,
on this ground, that it must be presumed simulate and collusive, and for the
rebel the common debtor's behoof, in so far as the donatar suffered him to con-
tinue in the quiet and peaceable possession of a house, the rent whereof fell
under his escheat, and made a considerable part thereof, and had not removed
him now by the space of five or six years. *Answered*, He had completed his
gift, by obtaining decreets both of general and special declarator, and put him-
self in possession of all the lands, except one little house the debtor possessed
by bangistry, and was dwelling in it in his father's lifetime, and against whom
he was *in cursu diligentia*, but was hindered by these parties competing their
opposition, and laying on termly arrestments; and whatever such an imagi-
nary simulation and connivance might operate against a single escheat, in de-
taining of moveables; yet it signified nothing in the possession of lands, the
possession whereof we daily see bankrupts detain in spite of their creditors.—THE
LORDS found there was a difference betwixt a rebel's sitting still in a house after
a gift and declarator, and his lifting rents from other tenants, where he was not
in the natural possession himself, which the donatar ought to interrupt; and
therefore found no simulation in this case, and assoilzied from the reduction,
and decerned in the mails and duties, preferring the donatar.

Fol. Dic. v. 2. p. 158. Fountainhall, v. 2. p. 370.

1713. February 19.

JOHN WHITE, late Bailie of Kirkcaldy, *against* DANIEL REID.

No 268.

A gift of life-
rent escheat
not found to
be simulate
and null for
the rebel's
continuing to
possess a
small part of
his estate re-
mote from the
rest, the do-
natar's assig-
nee having
so far prose-
cuted his
right as to ob-

IN the competition for the mails and duties of the lands of Birkhill, betwixt
Bailie White and Daniel Reid, the LORDS having, No 16. p. 37., found, That
the Bailie, as deriving right to an adjudication of the said estate, by dis-
position from Sir David Arnot, after his single and liferent escheat was gifted
and declared in favour of Sir Patrick Scot, Daniel Reid's author, could not
quarrel the gift upon the 128th act, Parl. 12. James VI, as simulate and null
by the donatar's allowing the rebel to continue in possession; Bailie White
obtained a second gift of Sir David's escheat, and insisted for preference upon
the foresaid ground, that the gift to which Daniel Reid pretends right, was si-
mulate and null by the said act 125th, in so far as Sir Patrick Scot, obtainer