

No 53. poned by Gowrie as Abbot, and that tacks or pensions granted by prelates and conferred *in indebitum tempus*, were null.

*Fol. Dic. v. I. p. 521. Haddington, MS. No 647.*

\* \* \* The blanks in this case are obliterated in the MS.

1605. May 30.

DOUGLAS against SPALDING.

No 54.  
Nullity of a gift of escheat as taken for the rebel's behoof, was sustained at the instance of a posterior donatar against a prior.

ALEXANDER DOUGLAS obtained the gift of escheat of umquhile Hugh Weir of Clowburn, and intented declarator thereupon; thereafter, Spalding in Dakkeith, obtained a gift of the said escheat, and sought declarator. Alexander Douglas *alleged* he should be preferred, in respect of the first gift and first declarator intented. Spalding *alleged* Alexander Douglas's gift to be null, in respect it was simulate taken to the behoof of the rebel upon his expenses *retentæ possessione*, and offered to prove the same by the treasurer, clerk, and writers to the seals and keepers thereof. It was *answered* by Alexander Douglas, That he was not a conjunct person, and offered to him to prove, that he had paid the hail expenses with his own private money, and he not getting possession was for want of a declarator, while now he ought, and now the rebel was relaxed, so that he might not intromit. THE LORDS found the allegiance upon the last gift and simulation of the first donatar to the behoof of the rebel, relevant to be proven by writ or oath of party.

*Fol. Dic. v. I. p. 521. Haddington, MS. No 781.*

1608. February 9.

STRAITON against JERVISWOOD.

No 55.

IN an action betwixt Straiton and the Laird Jerviswood, the LORDS found that an assignation made by a rebel *stante rebellione* was null, and that the nullity was competent to any man, albeit he were neither creditor nor donatar *sed quilibet e populo*.

*Fol. Dic. v. I. p. 523. Haddington, MS. No 1437.*

1611. February 21.

EARL OF GLENCAIRN against BOYD.

No 56.

AN assignation made to a man being at the horn, found null by way of suspension, albeit he who quarrelled it, was not donatar nor denunciator.

*Fol. Dic. v. I. p. 523. Haddington, MS. No 2169.*