

discharge was after citation, but ordained to take Shaw's oath, if that furnishing was all truly made before the citation; which being sworn to be so, the LORDS found, that the discharge ought to be sustained, albeit dated after the citation, and found it not necessary to prove the preceding furnishing otherwise than by his oath, in respect of the discharge.

No 50.

Act. Mowat.

Alt. Burnet.

Clerk, Gibson.

Fol. Dic. v. 1. p. 556. Durie, p. 530.

1635. February 10.

MOSSMAN against LOCKHART.

No 51.

A DISPOSITION of certain goods and gear made by a rebel after his rebellion, but before the gift of escheat was disposed to a lawful creditor who qualified his debts, sustained against the donator of the rebel's escheat.

Fol. Dic. v. 1. p. 548. Auchinleck, MS. p. 180.

\*\*\* Durie reports this case:

1635. Feb. 10.—ONE Mossman, relict of James Nisbet, being donatrix to her umquhile husband's escheat, after general declarator, pursues Lockhart and Laing, who had certain of her husband's goods and gear in their hands, by a special declarator, for delivery of the same to her; and they *alleging*, That the said defunct being their debtor, delivered the said goods to them in his own lifetime long before the purchasing of this gift from the King, by virtue of which delivery they became in possession, proceeding upon a just cause of debt; and the donatrix *answering*, That it was not relevant, except that the defenders alleged that the delivery was made before the rebellion; for, after he was at the horn, he might do no deed which could prejudice the King, no more than a rebel year and day at the horn might dispoise his lands after the year expired in prejudice of the superior's right to his liferent;—THE LORDS found the allegation relevant; and found it not necessary to the defender to say the delivery was made before the horning, being done before the gift was disposed, as said is.

1635. Feb. 14.—IN this cause, mentioned February 10. 1635, the defenders *alleging*, That the rebel was their debtor, and qualifying the same by the disposition made to them by the rebel of the goods therein contained, made by him to them for satisfying of his debt contained in that disposition, and which he therein confessed was owing by him, and which they alleged was sufficient, for, if they had had a preceding bond, it could have borne no more than that disposition bore, viz. 'That he was their debtor in that sum,' and when they received that payment made by the disposing of these goods, they destroyed

No 51.

the first bond, so that the disposition alone was sufficient to prove the debt; especially seeing, when they acquired the said disposition, and payment thereby, the disponent was then relaxed from the horn and was a free person;—THE LORDS repelled the allegiance, and found the disposition, albeit proverting a confession of the debt, was not enough to prove the debt preceding the horning; for, after horning, any rebel might, by such deeds, defraud the King and his donatars, to confess debts which truly they were not owing, and so frustrate the King altogether, if this were sustained; and, albeit the rebel was then relaxed, yet that did not purge his preceding rebellion which made all his goods to fall which he had before the rebellion, and at the time thereof before he was relaxed.

Act. ———.

Alt *Heriot*.*Durie, p. 753. & 755.*

\* \* \* This case is also reported by Spottiswood :

1635. *Feb. 13.*—KATHARINE MOSSMAN, donatar to the escheat of umquhile James Nisbet her husband, having obtained general declarator thereupon, convened Allan Lockhart for delivery of certain goods belonging to her husband. *Alleged*, The same were disposed to him by the rebel for payment of a true debt owing by him to the defender, whereof he was in possession long before the gift. *Replied*, Not relevant, except it were alleged disposed before the rebellion, for after he was rebel he could do no deed in prejudice of the King or his donatar. THE LORDS found the exception relevant. After this the defender being urged to condescend how he was creditor to the rebel, produced an assignation made to him by the rebel of the goods libelled, which assignation bore to be granted for sums of money. THE LORDS would not find him a creditor, because the assignation bore it, being only the concession of the rebel, but would have him qualify it some other way.

*Spottiswood, (ESCHEAT and LIFERENT.) p. 107.*

1636. *July 30.*

JAMES JOHNSTON of Corehead *against* JAMES JOHNSTON of Neis.

No 52.

A DEBT being owing to the rebel, and assigned by him to one of his creditors *stante rebellione*; if the assignee hath not got possession of what is assigned to him, before the gift of his cedent's escheat, the donatar will exclude him from it, although it be for never so onerous a cause.

*Fel. Dic. v. 1. p. 556. Spottiswood, (ESCHEAT and LIFERENT.) p. 107.*