

nounced upon general letters, against the act of Parliament, there being no probation nor trial, that she was addebted in that quantity contained in the charge; and, as the party herself could not be compelled to pay the sum libelled, until the time that it had been tried, and she found debtor therein, even so the donatar is far less subject; likeas he renounced that gift of escheat. And it being *replied*, That the donatar by virtue thereof intromitted, so that he could neither renounce, seeing *res* was not *integra*, neither oppone any nullity against that horning, whereupon he had taken the escheat, and intromitted,— THE LORDS repelled the allegiance, and sustained the horning, in respect of the donatar's intromission, whereby they found, that he could neither quarrel the horning, nor renounce the gift; neither was it respected, that the defender alleged, that, whatever intromission he had, the horning being vitious, as said is, and the debt never constitute, that he would be, in law, forced to pay the same back again to the parties having right to the said Janet Kid's goods, which was repelled.

Item, THE LORDS found, That the donatar was not liable for the annualrent of the money contained in the horning, since the time of the denunciation, as the pursuer craved, conform to the act of Parliament, which he alleged was alike against the donatar as against the rebel's self, which was not sustained, but absolvitor granted therefrom; for it was found the act of Parliament could not be extended.

Act. Burnet.

Alt. Russel.

Clerk, Hay.

Fol. Dic. v. I. p. 253. Durie, p. 581.

1663. February 10.

WILLIAM MONTGOMERY against THEODORE MONTGOMERY, and Mr WILLIAM LAUDER.

WILLIAM MONTGOMERY, as donatar to the liferent escheat of Theodore Montgomery, pursues a special declarator against the tenants of Whiteslide, belonging to Margaret Hunter in liferent, and now to Theodore, *jure mariti*, for their duties. It was *alleged*, That the horning was null, because the debt was satisfied before denunciation. The pursuer *answered*, That it was not competent, in the special declarator, to question the nullity of the horning. *2dly*, Though it were in a general declarator, it were not competent, not being instantly verified without reduction. *3dly*, It were not probable, but by writ, before the denunciation, and not by the creditor's oath, or having discharges, being in prejudice of the King; but that no hazard might be of antedating it, was required by act of Parliament, that beside the writ, the parties should depone upon the truth of the date. The defender *answered* to the *first*; All defences competent in the general declarator, are reserved in the special. To the *second*, There is a reduction depending.

No 4.

nullity of the horning. A donatar is not liable for annualrents that became due after denunciation.

No 5.

In a declarator of escheat, the horning was alleged to be null, as being upon a null decreet. This was repelled, because the party was in contempt in not suspending *debito tempore*.

No 5.

THE LORDS found the defence relevant, only *scripto* of the denouncer.

The defender further *alleged* the horning was null, as being upon a null decret, and falling therewith in consequence.

THE LORDS repelled the defence, and found, though the decret were null through informality, yet the horning would not be annulled, but the party was in contempt, in not suspending *debito tempore*.

Compearance was also made for Mr William Lauder, who *alleged* he had disposition from the rebel, before year and day run. THE LORDS found this allegiance not relevant, unless it were alleged to be for a just debt, before the denunciation. It was further *alleged* for Mr William, That the pursuer granted back-bond to the treasurer to employ the gift, by his appointment, and he offered to satisfy the donatar's debt, and the whole expense of the gift.

THE LORDS found this not relevant, without a second gift, or declaration from the treasurer.

Fol. Dic. v. I. p. 252. Stair, v. I. p. 175.

S E C T. II.

What falls under Single, what under Liferent Escheats.

1623. February 26. SIBBALD against L. LETHENTIE and L. CLUNIE.

No 6.

The sub-vassal's liferent escheat falling to the vassal, is carried as a part of the vassal's single escheat when the vassal afterwards becomes rebel; but the vassal's liferent escheat falling, the donatar there- of is entitled to the liferent escheat of the sub-vassal falling thereaf- ter.

THE Laird of Clunie holding the lands of Clunie of the Bishop of Dunkeld, disposes the same, by two charters, to the Laird of Lethentie; the one to be holden of himself, the other of the superior, and he is infeft to be holden of Clunie; thereafter they are both at the horn, and remain year and day thereat, whereby Lethentie's liferent holden of Clunie of the said lands of Clunie falls in the Laird of Clunie's hands his superior, and the same falls in the Bishop's hands as Clunie's superior, by Clunie's liferent, through his rebellion year and day. The gift of Clunie's escheat, after his lying at the horn year and day, is gifted by the King to Mr Patrick Sibbald, who obtained a general declarator, and thereafter seeks and pursues for a special declarator, to have the liferent right of these lands adjudged to pertain to him by the simple escheat, as coming under the same, as a casualty belonging to the King, in respect Clunie's vassal, viz. Lethentie's liferent falling to Clunie, Clunie's rebellion made Lethentie's liferent to pertain to the King, as a part of the casualty of Clunie's simple escheat; and so he contended, that Clunie's superior could not pretend right to