

acclaimed, which the LORDS admitted to probation, to the effect foresaid, as said is.

No 51.

Act. Aiton &amp; Stuart.

Alt. Nicolson &amp; Belshes.

Clerk, Gibson.

*Durie, p. 301.*

1667. January 24.

SIR HENRY HOME *against* TENANTS OF KELLO and SIR ALEXANDER HOME.

No 52.

SIR HENRY HOME having apprised the lands of Kello from Henry and John Homes, and being infest, pursues the tenants for mails and duties. Comparance is made for Sir Alexander Home, donatar to the forfaulture of the said John Home of Kello, who *alleged*, That the forfault person, the time of the doom of forfaulture, was in possession of the lands in question, in whose place the donatar now succeeds; and, by the act of Parliament 1584, it is statued, that where the forfault person was in possession the time of the forfaulture, albeit not by the space of five years, which would constitute a right to him, that the donatar must be put in possession, and continue five years in possession, that in the mean time he may search and seek after the rebel's rights. It was *answered, 1st*, That this part of the statute is only in case the rebel had tacks, or temporary rights, which neither is, nor can be alleged in this case. *2dly*, The five years possession must be reckoned from the doom of forfaulture, after which the King's officers or donatar might have attained possession, and if they did not, their neglect cannot prejudice others. *Ita est*, there are five years since the forfaulture, and the rents are extant, being sequestrated. It was *answered*, That the act expresses, not only in case of tacks, but also in possession, and that the five years must be after the possession began, and not the forfaulture.

Forfeiture gives the Crown five years rent of any land the forfeited person was in possession of at the time of the sentence.

THE LORDS found the alleageance relevant; that the rebel was in possession, and preferred the donatar to the five years rent, after the date of the forfaulture.

It was further *alleged*, That the pursuer's right being but an apprising, the donatar would instantly satisfy the same at the bar. It was *answered, Non relevant*, to retain by way of exception, but the donatar behoved to use an order, and pursue a declarator. It was *answered*, That in apprisings, an order upon 24 hours requisition was sufficient, there being no further solemnity required, than that the appriser might come to receive his money.

THE LORDS found, that the apprising might be summarily satisfied *hoc ordine*.

*Stair, v. 1. p. 429.*