

## S E C T. VIII.

## Competition Escheat with Apprising.

No 54.

1622. July 6. SIR PATRICK MURRAY *against* ADAMSON.

FOUND, that comprising does not prejudice the King's Majesty of the liferent, albeit infeftment follow on the comprising before the gift of liferent, or before citation.

*Item* found, that simulation of escheat cannot be opposed against a third party who occupies *bona fide*. See No 57. p. 3660.

*Fol. Dic. v. 1. p. 256. Kerse, MS. fol. 220.*

No 55.

The donatar of single escheat was preferred to an appriser of a husband's *jus mariti*, the apprising being after the rebellion, tho' prior both to the gift and declarator.

1668. July 18. LORD DUMFRIES *against* SMART.

THE Laird of Wamphray being due a yearly annuity to his good-mother, the Lady Wamphray, which now belongs to the Laird of Castlemains, her husband, *jure mariti*, there is a competition thereanent betwixt ———, factor to the Earl of Dumfries, whose name was used in the gift to Dumfries's behoof, as donatar to the escheat of Castlemains, and Smart, as having apprised from Castlemains the right to this liferent, *jure mariti*; who *alleged* that he ought to be preferred to the donatar, because albeit his apprising was after the rebellion, yet it was upon a debt anterior to the rebellion, and was long before the donatar's gift; and therefore, according to the known custom, diligences of creditors being before the gift, or declarator, are always preferred to the donatars of single escheat.—It was *answered* for the donatar, That that custom was never further extended than to moveables, or moveable sums, pointed or made furthcoming upon arrestments, but never to rights having *tractum futuri temporis*, which cannot be carried by pointing or arrestment, but by apprising or adjudication, as tacks or liferents, when assigned; so that the *jus mariti* being a legal assignation, and thereby falling under the husband's single escheat, falls to the King and donatar by the rebellion, and cannot be taken away by an apprising posterior to the rebellion.

Which the LORDS found relevant, and preferred the donatar.

*Fol. Dic. v. 1. p. 256. Stair, v. 1. p. 554.*

\* \* \* Gosford reports the same case :

IN a double poinding raised by Johnston of Wamphray, wherein were called one Smart, who had comprised the liferent of some lands belonging to the Lady Wamphray, who was again married to the Laird of Castlemains, upon a debt due by Castlemains himself ; as likewise for the Earl of Dumfries and Ley, who had right to the single escheat of the Laird of Castlemains by gift from the King, under which the Lady's liferent did fall, as belonging to Castlemains *jure mariti*, the LORDS preferred the donatar and his assignee ; albeit it was alleged that the compriser was infest long before any gift granted by the King, or any diligence done thereupon ; and found, that by the denunciation of the rebel, his *jus mariti* did fall under escheat, and the King and his donatars had thereby *jus acquisitum*, and that right having *tractum futuri temporis* the donatar might pursue at any time thereafter, notwithstanding of intervening comprisings.

No 55.

Gosford, MS. No 38. p. 13.

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S E C T. IX.

Competition Liferent-escheat with Creditors.

1615. March 9.

M'MATH against STEWART.

IN an action of removing, pursued by William M'Math, against Stewart of Dunduff, it was found by the LORDS, that the comprising led by William M'Math, of Dunduff's lands, whereupon he was infest, holden of the King, could not be prejudged by a gift of liferent of Dunduff's lands, granted by the King after the comprising, albeit Dunduff was year and day at the horn before the leading of the comprising.

No 56.

Fol. Dic. v. 1. p. 256. Kerse, MS. fol. 219.