chequer, that being secured of his own lands, and of some personal debts due to him by his brother the disponer, he should make no further use of the gift. Again, it was free for the King to grant the gift in favours of the pursuer, or any body else; and the pursuer's taking of the gift was not a fraudulent, but a rational and necessary course; nor can the pursuer be suspected of collusion with his brother, to make the recognition be incurred in prejudice of the other creditors, his brother being one of those that strenuously quarrelled his right; and there being several alienations made to others after that in favours of the pursuer. No 17.

"THE LORDS found, that the pursuer's own lands, whereof he neglected to take confirmation, ought not to be brought *in computo*, for making up the major part, in order to infer recognition; and that the pursuer could not use the gift to the prejudice of the defender; nor could thereby secure the personal debts due to him." There was no difference of opinion among the Lords about this interlocutor, which seems irregular. After it was carried by vote, a settlement was recommended from the Bench, but that took no effect.

1688. *July.*—JAMES BUCHAN having raised reduction of the decreet mentioned above, the debate was resumed; but the LORDS considering, that it was *res judicata super iisdem deductis*, they were unwilling to meddle with it; but recommended a settlement to the parties.

Harcarse, (REMOVING.) *No* 824. *p.* 230. & *No* 831. *p.* 239.

*** Fountainhall also mentions this case:

1683. *February* 7—JAMES BUCHAN of Ockhorn's recognition of Auchnacoy discussed, and Forbes of Savock assoilzied from it, as not incurred.

1684. *February* 29.—FORBES of Savock or Auchnacoy *contra* Buchan of Ockhorn being reported by Redford; the LORDS ordained them before answer for clearing the matter of fact, to condescend to whom he paid the sum of the wadset, (whether to M'Ghie, or to) and to produce the second contract of wadset, by which it is alleged, the first is innovate and past from.

Fountainhall, *v.* 1. *p.* 216. 276.

1685. *November* 24. ARCHBISHOP of ST ANDREWS *against* TOWN of GLASGOW. No 18.

A BISHOP having set a 19 years tack of his tithes for a small duty, but a large grassum, after his *conge d' eslire* was come down for another bishoprick; and, after his translation, being charged for the grassum; it was *objected*, That the tack was null, as being granted after the setter ceased to be Bishop of that dio-

No 18. cese. The Lords repelled the defence, and would not allow the defenders to quarrel their own right. This decision is observed a little differently by Lord Harcarse.

Fol. Dic. v. 2. p. 82. P. Falconer. Fountainhall. Harcarse.

*** P. Falconer's report of this case is No 3. p. 2496., *voce* Community; Fountainhall and Harcarse No 67. p. 7836., *voce* Jus Tertii.

1687. *January* 12. Duke Hamilton *against* Countess of Callendar.

No 19.

A superior pursuing a declarator of non-entry against a Lady liferentrix, though he, as a near friend, was a consenter in her contract of marriage, and at his instance execution was to pass, and therefore it seemed his duty to have seen her infeft; yet the Lords repelled the defence, and found the lands in non-entry: But this being stopped and heard again, the Lords, upon another ground, found the decreet of declarator null, viz. because it being libelled, that it fell by the death of the last fiar, his heir of line was not called.

Fol. Dic. v. 2. p. 82. Fountainhall. Harcarse.

*** Fountainhall's report of this case is No 70. p. 2211, *voce* Citation; and Harcarse's, and Sir P. Home's No 38. p. 9323, *voce* Non-entry.

1710. *February* 10.

Hugh Wallace of Ingliston *against* The Creditors of Spot.

No 20.
A creditor at whose instance his debtor was denounced, having consented to his relaxation, was not allowed to quarrel the same upon account of any nullity or informality, whatever a third party might do.

In the ranking of Spot's Creditors contained in Lord Alexander Hay's backbond to the Exchequer, upon his getting the gift of the common debtor's escheat, Ingliston craved preference for the debt in the horning upon which the escheat fell, in the terms of the act of Parliament.

Alleged for the other creditors; No respect can be had to Ingliston's horning, because the rebel was duly relaxed before the casuality fell; and therefore the gift of escheat must be understood to have proceeded upon denunciation at the instance of other creditors.

Answered for Ingliston; The relaxation is null by the act 75. Parl. 6. Ja. VI., being executed at the cross of Edinburgh, albeit the rebel was denounced at Haddington, where his lands lay. Ingliston's consent to relaxation imports only, that *per eum non stetit*, if Spot was not lawfully relaxed; which not being done, the relaxation and consent fall of course.

The Lords found Ingliston's consent to the relaxation relevant to exclude him *personali objectione* from quarrelling upon the account of any nullity or informality, whatever a third party might do.

Fol. Dic. v. 2. p. 81. Forbes, p. 398.