

1594. December. HENDERSON against Laird Southouse.

No 24.

Found that the donatar to a life-rent may warn tenants to remove, even before declarator, which will be drawn back to the date of the gif, and make the warning to convalesce.

WALTER HENDERSON, writer, donatar to the Laird of Southouse's liferent, warned one John Tweedie and certain other tenants to remove from the lands of . It was *excepted* by the defenders, That they ought to be assoilzied, because his warning was made by him who had no right, in so far as this donatar not having obtained declarator, could not warn lawfully. To this was *answered*, That Southouse being rebel more than seven years, and this gift disposed to this pursuer, and declarator intended long before this warning, having since then obtained decret, declaring the said liferent to have appertained to him, it behoved to be drawn back to the time of his gift, at the least to the time of the raising of his summons of declarator, and so behoved to make the warning to convalesce. In respect of the which answer, the allegiance was repelled. Next, it was *alleged* by the defender Tweedie, That he had tacks for terms to run. He being urged to condescend when and by whom they were set; and having declared that they were set by Andrew Duddingston of Southouse, *in anno* 1583; it was *answered*, That, notwithstanding of any such tacks, he behoved to remove, because, long before that time, his liferent was fallen in the King's hands by his rebellion; attour the space of year and day he could not thereafter set any tack to the King's prejudice, or his donatars. THE LORDS, by reasoning, inclined to the reply, and to have repelled the allegiance; but finding the preparative prejudicial to many, they ordained the parties to be farther heard; who after alleged to an heritable infeftment, which was also quarrelled. For, albeit a rebel may dispone upon his heritage, yet if he make not disposition before he have remained year and day at the horn, the King, as his donatar, will not be prejudged by any such disposition; but the same will be suspended during the rebel's lifetime; always the defender ailege tacks and infeftments made to them long before the rebellion, which was admitted to probation.

Fol. Dic. v. 2. p. 306. Haddington, MS. No 459.

 GLENDINNING against TENANTS OF PARTON.

No 25. IN an action pursued by John Glendinning of . against the tenants of Parton, for spulziation of teinds, the LORDS would not sustain an inhibition, used as heir to his goodsire, because he was not served and retoured the time of the serving of the inhibition.

In the same cause the LORDS found an exception relevant upon payment of a part of the duty.

Fol. Dic. v. 2. p. 304. Kerse, MS. fol. 99.