

No 24.

same action, it was questioned, Whether, if the gift of ward and marriage of the Earl of Argyle obtained by this Ardkinglass's father in *anno* 1584 fell to his executors or to his heir. It was *resolved* that it fell to his heir, and could not come under testament, because it was not liquid. But if decret had been obtained upon the avail thereof in old Ardkinglass's time, it would have fallen under his testament. For confirmation of this resolution, there was *alleged* a practique betwixt the Earl of Cassillis and Lord Glamis, and another betwixt Sir William Keith and the Laird of Leslie.

*Fol. Dic. v. I. p. 367. Haddington, MS. No 1667.*

1611. *March 5.* LORD DOUGLAS *against* CRAWFURD.

No 25.

THE fiar obtaining renunciation of the liferenter's right in his favour, may thereby have action for the vassal's liferent, who holds his lands of him; which fell before the fiar obtained the renunciation foresaid; because the casualties and superiority not being pursued and decerned, pertain to him that acquires the right of superiority.

*Fol. Dic. v. I. p. 367. Haddington, MS. No 2177.*

1624. *February 8.* L. COULTER *against* FORBES.

No 26.

A gift of life-rent escheat, upon which declarator had been obtained, found to belong to the heir of the donatar, except as to bygones, due to him before his decease, which would belong to his executors.

IN an action betwixt the L. Coulter and L. Balbigno; for declarator of Balbigno's liferent, John Forbes, son and heir of umquhile Mr. Duncan Forbes compeared, as claiming the right of the said liferent to pertain to him, seeing his father was donatar thereto, and had obtained declarator thereupon, at his instance, before his decease; and so he, as son and apparent heir, had right to the same, and consequently, to impede all declarator at any other person's instance; and the pursuers *contending*, That the apparent heir could have no right to that liferent, the donatar being deceased, but that the same would pertain to his executors; the LORDS found, That the said liferent right, and gift, and declarator thereof, pertained to the heir of the donatar, and not to his executors, except for the bygone years owing to the donatar before his decease, which would appertain to his executors.

*Act. Burnet.*

*Alt. Baird.*

*Clerk, Scot.*

*Fol. Dic. v. I. p. 367. Durie, p. III.*