

1622. *July 5.*DONATAR to the E. TULLIBARDINE'S Escheat *against* ADINSTOUN.

No 57.

After a vassal has been year and day at the horn, his liferent escheat is as fully established in the superior's person as if he had been infest on a right derived from the vassal; but every right granted by the vassal during the currency of year and day, will be preferred to the donatar's gift of liferent escheat.

IN an action of declarator of the Earl of Tullibardine's liferent, pursued by a donatar, and the donatar's assignee, who was a creditor to the rebel, the LORDS repelled the allegiance which was proponed against the declarator by Thomas Adinstoun, creditor to the rebel, founded upon the comprising led against the rebel, of the lands desired to be declared, and public infestment granted by the King's Majesty to him of the lands comprised, and diligence by pursuits intented thereupon, which was good and lawful possession, as the excipient alleged; which exception and infestment foresaid, right and diligence therein contained, the LORDS found could not take away the liferent which pertained to the King, and fell by the rebellion, and by lying thereat year and day, and which was gifted to the donatar before the comprising: And albeit no more diligence was done by the donatar before the deducing of the comprising, yet the LORDS found that the liferent pertained to the King, and the compriser's infestment was affected with that condition of his debtor's liferent, whereof the King nor his donatar were not prejudged by the subsequent infestment granted by the King, which proceeded upon the comprising, as said is; and specially, seeing the right to the liferent and gift thereof was devolved upon another creditor of the rebel's, who was made assignee thereto by the donatar, and which assignee purchased the same for a further security of certain lands bought by him from the rebel, and to the which lands bought by him, he restricted the declarator; which assignee was found to be in a better case than the donatar, who was alleged to have procured the gift to the rebel's use, and which was not respected, it not being alleged that the assignee was partaker of that fraud.

Act. *Hope & Nicolson.*Act. *Peebles & Aiton.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 256. Durie, p. 29.*

* * * The same case is reported by Kerse, No 54. p. 3658.

1623. *December 3.*HERRIS *against* GLENDINNING.

No 58.

Found as above.

ONE Janet HERRIS having certain lands disponed to her by Glendinning of Parton. by his charter of alienation made to her of the same, and having served inhibition thereupon, no sasine being taken of the lands for the space of fifteen years after the charter; and after sasine, she pursuing removing, the pursuit was elided, because after the charter, and before the sasine, Parton who was her author, was rebel, and remained so, before she took sasine, year and day at the horn, whereby his liferent of these lands fell in the King's hands; likeas the said liferent being given to a donatar, declarator was obtained thereupon,