

reason of the fee, and that the vassal being in the construction of law *capite minutus*, cannot serve the superior; and a gift of liferent escheat needs no declarator to complete it. Though the bond and precept of sasine were granted before the denunciation, it still continued in the state of a personal obligation, till after the casualty fell to the fisk; and personal obligations cannot compete with the superior, or donatar of the liferent escheat. Seeing infeftment was not taken within the course of the rebellion, that is, within year and day after the denunciation, *jus erat quæsitum domino superiori*, which no posterior infeftment can take from him. And seeing the gift and declarator adds no new right to the superior, but only declares what was his by the denunciation, and the rebel's continuing year and day at the horn; it is all a matter, whether the infeftment be prior or posterior to the gift, Stair, Instit. p. 265. (276.)

*Replied* for Lord Alexander Hay; All the decisions preferring the donatar, were in cases where the infeftment was taken after the liferent escheat was gifted; whereas the infeftment in question is more than year and day anterior to the gift.

THE LORDS found the gift of escheat preferable to the heritable bond.

*Forbes, p. 442.*

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S E C T. X.

Liferent Escheat once devolved stands good against posterior rights.

1624. *January 23.*

DONATAR of MELDRUM'S Liferent Escheat *against* His SUPERIOR.

ANDREW MELDRUM being heritor of the lands of Old-Ley, holden by him of another superior, by contract disposes the lands to John Meldrum, and obliges him to give to the said John two infeftments, one to be holden of himself, and the other to be holden of his Superior; likeas, he subscribes and gives him a charter of the lands to be holden of himself, whereupon, and by virtue whereof, he is seased, and also at the same time subscribes a procuratory of resignation in favours of John, for resigning of the lands in the Superior's hands, by virtue whereof John might resign, and procure himself infeft, to be holden of the Superior when he pleased. John being at the horn after the sasine taken by

No 71.

A purchaser, who got procuratory and precept, having infeft himself base, his liferent was found to fall to the disponent, and found not evacuated by the rebel's obtaining a public infeft.

No 71.  
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 signation, the  
 same being  
 obtained after  
 the running  
 of year and  
 day, and after  
 declarator at  
 the donatar's  
 instance.

him, by virtue of the base charter; and remaining thereat year and day, Andrew his Superior, by virtue of that base holding, disposes his liferent of these lands to a donatar who obtains declarator thereupon; thereafter upon the foresaid procuratory of resignation made by Andrew, resignation is made in the Superior's hands, and John infeft to be holden of the Superior; after the which public infeftment he remained year and day rebel. The Superior claims the right of his liferent, which he contended should pertain to him, and that Andrew his right behoved to cease to that liferent, how soon John his vassal was entered by Andrew his Superior, seeing the infeftment given by the Superior extinguished the base infeftment holden of Andrew, which ceased by the public right; which being granted, behoved to cause that casualty of the vassal's rebellion, to pertain to the superior of that vassal; and Andrew ceasing to be his Superior, he could not bruik the casualty of the superiority, which only behoved to go and pertain to him who was the superior; specially seeing the procuratory of resignation being the said Andrew's own deed, albeit sasine was not taken thereupon, nor resignation made conform thereto long thereafter, and long after the vassal's remaining rebel, attour the space of year and day; yet he was so denuded thereby, that he could claim no casualty of the vassal's rebellion, being absolutely denuded by his own resignation; at least, if any right he had to that liferent, as of lands holden by that base holding of him, it could last nor endure no longer, neither to himself nor to his Donatar, who could be repute in no better case than himself, but for these years during the which the rebel remained his vassal, and while the said base holding subsisted; but as for the years after the rebel was seased by the public holding, how soon year and day expired after that public holding, the liferent of all years thereafter, ought to pertain to the Superior. THE LORDS found, that the casualty of the liferent falling, whileas the rebel stood vassal, by the base holding of the immediate Superior, and being gifted to a donatar, and declared before sasine or resignation was made, for giving of the public infeftment, albeit the procuratory granted by that immediate superior, preceded the falling of that casualty, pertained to the said Andrew, and his Donatar, and ceased not by the subsequent public right; and that the Superior, by the public right, acquired no right to the said liferent, but that it remained with the donatar of the immediate superior, for all the years during that vassal's lifetime, who was rebel.

Act. Nicolson.

Alt. Hope et Mowat.

Clerk, Gibson.

Fol. Dic. v. 1. p. 257. Durie, p. 101.