

1623. February 27. L. ESSILMONTH *against* L. BUCKIE.

IN an action betwixt L. Essilmonth and L. Buckie, the LORDS found, that a gift of escheat given and conceived *specifice* in these words, viz. of all which pertained to the rebel the time of his rebellion, could extend to nothing which the rebel had after the precise time, when he was denounced to the horn, or which he acquired after horning, but only extended to the goods which actually pertained to him at the very time of the denunciation; and where gifts of escheat bore this clause, viz. of all goods which the rebel should acquire after his rebellion, that such clauses ought not to be sustained in any sort, neither that it ought to be restricted or sustained for all goods which he should acquire within a year after the gift, for the which the Lords refused to allow these gifts.

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Gifts of escheat not to be extended beyond the express terms of the grant.

Act. *Nicolson & Lermontb.*

Alt. *Hope & Lawtie.*

Clerk, *Hay.*

*Fol. Dic. v. 1. p. 346. Durie, p. 53.*

\* \* \* Haddington reports the same case :

IN the action betwixt John Bruce and Buckie, the Lords fand; that a gift of escheat, bearing, that the King gives the goods pertaining to the rebel the time of his denunciation, could be extended to no others, but such as then belonged to the rebel, and not to any goods which he had thereafter, till the date of the gift, because it bore not the goods acquired and pertaining to him during the time of his remaining at the horn.

*Haddington, MS. No 2792.*

1625. July 29. SIR WILLIAM KER *against* SIR JOHN KER.

FOUND, that assignation of liferent tacks falls under the simple escheat of the assignee, albeit the tacks could not fall under the escheat, neither simple nor liferent of the tacksman and cedent, but only for the first liferent.

*Kerse, MS. fol. 221.*

\* \* \* Durie reports the same case :

SIR ROBERT KER, as donatar to the escheat of umquhile Robert Earl of Lothian, for putting hand in himself, and self-murder, having obtained a general declarator, thereupon pursues a special declarator, to hear the right of the tacks under-written, decerned to pertain to him, as falling under the said escheat; which tacks being of the teinds of Nisbet, were set to Sir John Hume of Hut-

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ton-hall, and umquhile Mr Samuel Hume, his brother, now deceast, during their lifetimes, and for 19 years thereafter; which tacks were assigned to Sir John Ker, by the said Sir John Hume, and his brother; and from the which Sir John Ker, the said umquhile Earl Lothian had comprised the same. In this process, the defenders compearing, and disputing, that the right of this tack could not fall under the E. Lothian's simple escheat for self-murder, no more than if he had been at the horn, by single rebellion, not remaining thereat year and day; in respect of the act of Parliament *anno* 1617, which declares, 'That liferent tacks (as are the tacks controverted) shall not fall under simple escheat;'—the LORDS found, that these tacks, albeit they were liferents in the first tacksmen, yet, after they were assigned by them, would fall under the assignees simple escheat by simple rebellion, and so thereafter would fall under the Earl of Lothian's simple escheat, who had comprised them, either by his simple rebellion, or through the cause libelled, or any cause which might make his escheat to fall; for the said tacks being assigned, were not to be considered as if they had been originally set to the assignee for his lifetime, and were not respected as liferents in the person of the assignee; but if the tacks had been originally set to the Earl of Lothian for his lifetime, and to his heirs and assignees for the space of 19 years thereafter, the question remains untouched by that act of Parliament *anno* 1617, if such tacks will fall under the escheat, if the first tacksmen should commit self-murder; and that his donatar had right to that 19 years tack, or if his heirs only had the right thereof, which appears pertains to the heirs, and not to the donatar of his escheat, no more than if he had been simply rebel, in which case the donatar, upon his simple rebellion, by the act of Parliament foresaid, is excluded from all right thereto; and in reason it appears, the same ought to be observed, in the other case; for no more can fall under the escheat, falling for self-murder, but that which pertained to the delinquent, and which was *in ejus bonis*; but this 19 years tack was not so, because it had no beginning, while after his decease, and began in the person of his heirs, or assignees, and so could not fall by his fault.

Act. Hope.

Alt. Aiton, Lawrie &amp; Nicolson, younger.

Clerk, Hay.

Durie, p. 184.

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1626. November 25. E. KINGHORN against Wood.

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A gift bearing all that pertained to the rebel at the time of rebellion, was found to extend to nothing that the

IN a declarator of escheat, at the instance of the Earl of Kinghorn against Wood, one compearing for another donatar, who had obtained a declarator already upon a prior gift; and the Earl *replying*, that by a back-bond given by that prior donatar to the Treasurer, the donatar was obliged to use the gift, by the advice of the Treasurer, he being refunded of his charges, to the effect that no creditor of the rebel should be prejudged; whereupon the pursuer subsumed,