No 7.

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 tacksman 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, Lawtie & Nicolson,* younger. Clerk, *Hay.*

Durie, p. 184.

1626. *November* 25. E. KINGHORN *against* WOOD.

No 8.

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,

that he was content to pay him his charges, and so having obtained a second gift, he should be preferred; this reply was not sustained, albeit the bond, which was produced, was of the tenor foresaid; for the first donatar was found by the Lords, notwithstanding of the foresaid bond, to have good right to the rebel's goods, as long as there was not a creditor of the rebel's to claim the benefit thereof; in which case, if any creditor should compear and allege right to the bond, *eo casu* the donatar was holden to use the gift after his own satisfaction, for satisfying of the said creditor compearing, by the advice of the Treasurer: But this was not found to be competent to another donatar, who could never have right by virtue of the second gift, he not being a creditor, to frustrate the first donatar of the benefit of the escheat; neither was it found, that the said first donatar could be compelled to receive satisfaction for his charges, given out for composition and otherways, and so to quit his right, but at his own pleasure, if he pleased so to do, and no otherways.

No 8.
rebel had after his denunciation.

A gift bearing all the rebel should acquire till relaxation, was found to extend to what he should acquire within a year after the date of the gift, he remaining unrelaxed. The reverse of this last part of the decision was found in the case of Essilmont against Buckie, No 6. p. 5071.

In this same process also, the LORDS found, that a gift of escheat, granted of all goods, &c. pertaining to the rebel the time of his rebellion, and bearing no other clause, nor extending to other goods which he had acquired since his rebellion, or before the gift, could extend to no more than was *specifice* disponed, and would not comprehend any goods which the rebel had acquired within the space of a year after his rebellion; for the King might by a new gift dispone the same again: and where the gift bore the disposition of the rebel's goods, which he had the time of the denunciation, or sincesyne, and should acquire thereafter, while he were relaxed; they found, that such gifts of that tenor would extend to all the goods which the rebel had at the time of his rebellion, or at the time of the gift, and also at any time after the rebellion, and before the gift; and sicklike, which he should acquire within a year after the date of his gift, he remaining at the horn unrelaxed all that time; to the which space, the LORDS found, that gifts of the tenor foresaid could be extended at furthest, and not any longer, otherways it should confound gifts of simple escheat and liferents.

November 28.—In the above-written declarator of the Earl of Kinghorn, an exception being proponed upon a prior gift granted to another donatar, as is above-mentioned, the same was elided by two replies, the one bearing, 'That 'the gift was taken to the behoof of the rebel, remaining rebel the time of the 'taking thereof, and also being rebel the time of the granting of the pursuer's 'gift;' which reply the Lords found relevant, notwithstanding of the defender's duply, bearing, 'That his gift was good, notwithstanding that the same was 'taken to the rebel's own use, in respect that he was now relaxed from the 'horn, and no creditor being prejudged by the taking of the same to his own 'use, he ought to be preferred, for it was lawful to the rebel to take it to him-'self, there being no creditor thereby hurt, and he now being relaxed.' This duply was repelled, and the said reply sustained, seeing the rebel being rebel,

No 8. and at the horn unrelaxed, the time of the taking of the said gift, granted to the pursuer, his relaxation sincesyne could not hinder the King effectually to dispone the escheat to a second donatar, (if the first was taken to the rebel's own behalf), and which was sustained, albeit there was no creditor thereby hurt; for the gift being taken to the rebel's use, continuing in his rebellion, was alike as if it had been gifted to himself, *quo casu* there was place to a second donatar to acquire a new gift at any time before the rebel's relaxation, as the gift given to the pursuer was, at the acquiring whereof he was not relaxed: Also this reply was found relevant, viz. that the said prior gift, granted to the excipient, was procured upon the travels and expenses of the rebel himself, which he offered to prove by the officers and members of Court, as use is in such cases, and which the LORDS sustained as sufficient *per se*, without any farther allegeance, that it was taken to the behoof of the rebel, to infer simulation. And the LORDS admitted the same in these terms, to the pursuer's probation. *See* PRESUMPTION.

Act. *Hope & Rollock.* Alt. *Stuart.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 346. *Durie, p.* 237.

1627. *February* 2. SOMERVEL *against* STIRLING.

No 9.
Found in conformity with the above.

IN an action of special declarator, at the instance of Lewis Somervel, donatar to the simple escheat of L. Edmiston, wherein Mr William Stirling, donatar to his liferent escheat, compeared, the LORDS found, that albeit the goods and gear of the rebel, which he had pertaining to him at any time within the space of year and day after the denunciation, would fall under the simple escheat; yet, if the same were not gifted, that is, if the gift bear only a disposition of the rebel's goods pertaining to him the time of his rebellion, or if it bore a disposition of the goods pertaining to him the time of granting of the gift; in those cases the gift would extend no further, and would not comprehend any other goods pertaining to the rebel, even which he had within the year, except the gift bear expressly, 'a disposition of all the rebel's goods which should pertain to him 'within the year;' which clause not being insert in the same, the gift could not comprehend them; and albeit the gift wanted that clause, yet the donatar to the liferent would not have right thereto, but there was place to the King and his officers *de novo* to dispone the same again to a new donatar, by way of simple escheat; and so the LORDS found, that this pursuer's gift, which was given in August, and bearing specially the disposition of the goods pertaining to the rebel the time of his rebellion, and of the said gift, which was granted within the year, could not extend to that whole year's farm, but only to the half thereof, viz. to the Whitsunday's term before the gift, and not to the Martinmas term after the gift, seeing the gift was of the foresaid tenor; but the