

S E C T. VI.

Effect of the Backbond, which the Donatar was by statute bound to grant.

No 33.

1626. November 25. KINGHORN against WOOD.

A PRIOR donatar's backbond bearing, that he should use the gift by advice of the Lord Treasurer, he being refunded all his charges, to the effect that no creditor should be prejudged; this donatar nevertheless was found to have good right to the rebel's goods, as long as there was not a creditor to claim the benefit of the bond, although another posterior donatar, who was not a creditor, offered to satisfy him all his charges.

Fol. Dic. v. 1. p. 348. Durie.

*** See this case, No 8. p. 5072.

No 34.

The surreptitious taking out a gift of escheat, without a backbond, after the acts of exchequer, by which gifts are prohibited to be expedite till the donatars grant backbond, was found not to benefit the donatar; but that the gift was qualified even against singular successors as if a backbond had been granted

1672. February 22. TREASURER-DEPUTE against LA. AYTOUN.

ANDREW PATERSON having obtained the gift of escheat of the Laird of Craig, and thereupon having obtained decret against the Earl of Dundee, as intro-mitter with Craig's moveables, whereupon the Earl of Dundee's estate was apprised; Aytoun having the gift of *ultimus hæres* of the estate of Dundee, and having obtained a second gift of the escheat of the Laird of Craig, he pursues a reduction of the decret against the Earl of Dundee, and infestment following thereupon, upon this reason, that Paterson's gift was granted by the Exchequer not gratis, but with a backbond, that being satisfied of the debt of the horning, and of his own debt, and of the expenses of the gift, there should be place for a second gift. Likeas there is an act of Exchequer in *anno* 1661, and another in *anno* 1663, whereby backbonds to be granted by donatars are appointed to be seen by the Treasurer, and gifts are prohibited to be expedite till that be done; yet, contrary thereto, Paterson's gift was surreptitiously taken out without backbond; whereupon the pursuer did pursue the said Andrew Paterson before the Exchequer, decerning him compearing to give a backbond, and declaring it to be of the same effect as if it had been given of the date of the gift. It was *alleged* for Aytoun, That whatever might be pretended against Paterson the first donatar, upon his unwarrantable and surreptitious taking out of the gift, without the backbond, the same cannot be relevant against Aytoun his singular successor, who was not called to the decret of the Exchequer, but who con-