

No 9.

disponed his liferent right of these sums, so that they think, if the sum be secured, to be made furthcoming after the liferenter's decease, to his heirs, executors or assignees, the donatar has the use thereof, during the rebel's lifetime; but it was found by the LORDS, that as long as the sum of the heritable bond remained unpaid by the debtor, or that the wadset remained unredeemed, that the donatar to the liferent had good right to the profit of the sum addebted by the bond, and to the profit of the lands wadset, so long as the same remained unredeemed, the creditor being on life, who was rebel; and it was so found in the foresaid process.

Act. *Craig*.

Alt. ———.

Clerk, *Hay*.*Fol. Dic. v. 1. p. 253. Durie, p. 207.*1628. *March 8.*DOUGLAS *against* L. WEDDERBURN.

No 10.

Found in conformity with No 6. p. 3616. The sub-vassal's liferent escheat first falling, makes a part of the casualty of the vassal's single escheat, but falling after the vassal's liferent-escheat, makes a part of the casualty of liferent-escheat.

IN a declarator of L. Wedderburn's liferent escheat of certain lands holden by him of John Stuart, having right to the benefice of Coldinghame, and thereby fallen in his hands as superior, and which was pursued against Wedderburn by William Douglas donatar to John Stuart's liferent escheat, and who had obtained declarator upon John Stuart's liferent, it being contraverted by the L. Wedderburn compearing, and *alleging* that his liferent, which had fallen since John Stuart his superior's liferent fell, and since it was gifted and declared at William Douglas's instance, and which was not then extant, to be comprehended within that gift of John Stuart's liferent, then granted and disponed, and so which he *alleged* could not pertain to the pursuer, whose gift of the superior's liferent could not extend to a casualty, falling forth to the superior thereafter, and which casualty, he *alleged*, could not be disponed by any gift of the superior's liferent escheat, but was proper only to be disponed by a new gift of the superior's simple escheat, as a provenient casualty, which could no otherwise be gifted but by a simple escheat, and could noways pertain to the donatar of his liferent. This allegiance was repelled, and this casualty of the sub-vassal's liferent was found, might be comprehended under the gift of the superior's liferent escheat, albeit the time of the gift it was not then extant; for the King having disponed John Stuart's liferent, and all which should befall to him, as that gift did extend to any feu, or other duties paid to him for these lands, whereof Wedderburn's liferent sasine fell, so behoved it to extend to a greater profit, which might befall to him thereafter, out of the same lands, by his vassal's fault; for that casualty of the sub-vassal's liferent was not a new purchase by the superior, whose liferent was acquired by the donatar, without any inherent casualty of the superiority, whereto the gift did extend, as effectually as if the superior had disponed to the donatar before his rebellion his liferent of all these lands whereof he was superior, *quo casu* as that disposition would

extend to the casualty of the sub-vassal's liferent, even so the gift of his liferent did extend thereto; and it was acknowledged by the Lords, if it had been extant at the time of the gifting of John Stuart's liferent escheat, that the King might have gifted this casualty of the sub-vassal's liferent, by the gift of the superior's simple escheat; but not the less, that if the King had not gifted it so, which he might effectually have done if he pleased, but had gifted it under the gift of liferent of the superior's escheat, that the gift of liferent might have also effectually been extended to it, the same being a proper casualty of the lands, and the liferent of the lands, or what is due out of the lands, being proper to be disposed by a liferent gift, likeas here there was no other donatar to the simple escheat. See DISCLAMATION.

No 10

Fol. Dic. v. 1. p. 253. Durie, p. 357.

. Kerse reports the same case.

Found that the liferent of a sub-vassal pertains to the donatar of the superior's liferent, notwithstanding that the sub-vassal was not at the horn the time of the gift granted to the donatar of the superior's liferent, but was put to the horn two years thereafter.

Kerse, MS. p. 221.

. Spottiswood reports the same case.

John Stewart of Coldingham being year and day at the horn, his liferent escheat was gifted by the King to William Douglas. Two or three years after the gift, the Laird of Wedderburn (who held some lands of John Stuart) was year and day at the horn likewise; whereupon William Douglas donatar to John Stuart's liferent escheat, pursued a general declarator of Wedderburn's liferent escheat of the lands holden by him of John Stuart. *Alleged*, That it could not fall under the compass of the superior's liferent escheat, but under the single, in respect it was a casualty fallen to the superior long after the falling of his own liferent, and so behoved to be gifted of new by the King. This matter was long reasoned, and many inconveniences represented, whereby both the King and all other superiors might be prejudged, if by the gifting of one's liferent, all casualties that should fall to the rebel afterwards were also disposed; for thereby both the King was prejudged of his composition for a new gift, and the superior also once being year and day rebel, albeit he were relaxed afterwards, yet he should never have any benefit by any casualty that might befall through the rebellion of his vassal (sicklike of ward and non-entry), but it should accresce to the donatar of his liferent: Nevertheless, THE LORDS repelled the exception, in respect there was not another donatar of his liferent; which if there had been, I think he would have been preferred.

No 10.

The same found betwixt James Rule and James Renton, the question being about the Laird of Billie's escheat, who was a vassal also of Coldingham, 26th July 1632. See No 13. p. 3624.

Spottiswood, (ESCHEAT) p. 102.

* * The same case is also reported by Auchinleck, *voce* DISCLAMATION, No 3. p. 3556.

1630. *March 23.*

MURRAY *against* DONATAR of COMMISSARY of DUNKELL'S Escheat.

No 11.

A proprietor of lands continued in possession thereof for several years after his liferent escheat had fallen. It was found that the superior had only right to as much of the farms of the several years past since the rebel was year and day at the horn, as the land used to pay of rent, and that the rest of the crop pertained to the donatar of the single escheat, deducting expenses of labouring, &c.

MR Patrick Murray donatar to the Commissary of Dunkell his single escheat, after general declarator pursuing a special, wherein he craved the corn and increase thereof, growing upon the lands of _____, pertaining to the rebel yearly, of divers years, since his rebellion; and the donatar to the liferent of the same rebel, of these lands constitute by the Bishop of Dunkell, of whom the rebel held these lands, compearing, and *alleging*, that the farms which these lands were worth, and which they used to pay before the years libelled, during the which years libelled, the same were laboured by the rebel's self, ought to be defalked yearly off the crops, and ought to be adjudged to the superior, and to his donatar, and the King and his donatar had no right thereto; and that the same came not under the single escheat; and the King's donatar alleging, that the same fell under single escheat, and that the superior had no right for the by-gone years acclaimed, because the pursuit was for years of long time by-past, during the which space the superior made no use of his liferent, nor acclaimed the same, but suffered the rebel to continue in possession, *et facere fructus suos*, whereby the King had right thereto, as single escheat, and not the superior, nor his donatar, who has only obtained the gift of liferent in January 1630, since his gift from the King, since which gift of liferent he may seek the liferent, and duties of these lands, for subsequent years, but not for the years by-past. THE LORDS found, that the superior and his donatar, had only right to as many of the farms the years libelled, since the rebel was year and day rebel, as the land was worth, and in use before to pay of farm, and that yearly, of all years as well by-gone as in time coming, and that the King's donatar had no right thereto, but only to the rest of the crop, and increase of the corns, each of these years, which increase pertained to him, and not to the superior's donatar; and it being *alleged* by the rebel, that the expenses debursed upon the labouring of the land, winning, shearing, and collecting of the corns, expended by the rebel thereon, and also the seed sown yearly upon the ground, ought sicklike to be deducted yearly off the increase acclaimed, and the pursuer *alleging* in the contrary; and sicklike the rebel *alleging*, that besides the foresaid defalcations, there ought also to be defalked off the first end of the crop and