

1665. July 21. Mr ROBERT DICKSON *against* Mr MARK KER.

THERE being a competition betwixt Mr Robert Dickson and Mr Mark Ker, as both having the gift of the escheat of Hume of Graden both past the Seal in one day; Mr Robert Dickson had past in Exchequer long before, and his summons was raised two days before his gift was sealed, and so was not a regular diligence. He *alleges*, Mr Mark Ker's was more irregular, because, being a declarator, his summons was not upon 21 days. It was *answered*, The summons was privileged. It was *replied*, That the privilege was granted *periculo petentis* upon a common bill, which passes without observation.

THE LORDS considering, that their gifts were both past in one day, and that there diligence was so near, conjoined the gift, and declared them jointly. See ESCHEAT. *Fol. Dic. v. 1. p. 347. Stair, v. 1. p. 300.*

No 30.
Two gifts
both past the
seals in one
day were
brought in
pari passu.

1714. January 29.

JOHN WHITE, late Bailie of Kirkcaldy, *against* DANIEL REID.

IN a competition for the rents of lands belonging to Sir David Arnot, betwixt Bailie White and Daniel Reid, both donatars of Sir David Arnot's escheat, by separate gifts, taken on different hornings, Daniel Reid's gift being declared and the Bailie's not; the LORDS found that Bailie White's gift could not compete with Reid's gift, there being no general declarator of the former, and it being taken on a distinct horning from that on which the gift already declared is taken; so that in the case of Lundie *contra* Lundie, 20th November 1629, *voce RES INTER ALIOS*, where a second donatar, upon production of his gift, with the horning whereupon it proceeded, was allowed, without declarator, to object against the first gift. Both gifts must have proceeded upon the same horning.

Fol. Dic. v. 1. p. 347. Forbes, MS. p. 20.

No 31.