

1629. February 24. POLLOCK against MUIR and SEMPIL.

No 24.

Found the reverse of No 22. p. 3632.

IN a special declarator for mails and duties, the husband of a wife, who is only liferentrix of lands, being year and day at the horn; the wife who is liferenter not being rebel; the superior of the lands whereof the wife is liferenter, having gifted the husband's liferent of these lands, so far as he had right there-*to jure mariti*, to a donatar, who after general declarator claiming the mails and duties by a special declarator; it was found, that albeit the husband was at the horn year and day, yet that thereby his liferent of these lands for the time of his living with his wife together, pertained not to the superior, seeing he was not a vassal to the superior, but only his wife was the vassal, who was not at the horn, whereby the superior could not have right thereto, but the said liferent would fall as a casualty of single escheat, and belong to be disposed only by the King, by a gift of single escheat.

Clerk, Hay.

Fol. Dic. v. 1. p. 254. Durie, p. 430.

1674. June 19. MURRAY against ARNOT.

No 25.

The escheat of a rebel residing in a regality, although denounced at the cross of the head burgh of the shire, falls to the Lord of regality, and reaches his moveables wherever found.

MURRAY of Lochland, as donatar to the escheat of Mr Alexander Malloch, pursues Margaret Arnot his relict for delivery of certain of the escheat-goods, who *alleged* absolutor, because she had right to the goods by a gift from the Earl of Tullibardine; and the defunct when he was denounced did live within the regality of Tullibardine, whereby the escheat-goods did belong to the Lord of regality, and not to the King who granted the pursuers gift. It was *answered*, That the denunciation whereupon both gifts followed, was not within the regality, but at the head burgh of the shire. It was *replied*, That where there is a head-burgh of regality known and accustomed, denunciation of these within the regality must be used thereat; but in many places there are none, but the denunciations are accustomed to be at the market cross of the shire; which custom hath been always allowed as at the cross of the regality.

THE LORDS found the defender's allegiance relevant, that Tullibardine was a regality, and the denunciations were accustomed to be against those in the regality at the cross of the shire; and found thereby that the Lord of regality and the defender his donatar had right to the escheat.

Fol. Dic. v. 1. p. 254. Stair, v. 2. p. 273.