

## No 35.

Creditors were held to be preferable to a donatar, the rebel having, before the forfeiture, disposed, under the burden of his debts, and the disposition having been confirmed by the superior.

1687. *February.* LORD BALCARRAS *against* WALTER DENHOLM and Creditors.

IN an action of mails and duties at the instance of the Lord Balcarras, donatar to the forfeiture of Sir William Denholm of Westshiels;

It was *alleged* for Sir William's Creditors; That he was denuded by a disposition and infestment to his brother, with the burden of his debts therein enumerated, and the infestment confirmed by the president as superior, two years before committing the crimes for which he is forfeited.

*Answered*; Sir William was cited for the crimes of treason, viz. 'harbour and reset,' before the disposition, and thereafter declared fugitive by the Justices; and the committing of the last crime of invading the kingdom with Argyle, was a continuation of the treasonable design, or *meditatio criminis*; and the effect of the forfeiture ought to be drawn back to the first citation.

*Replied*; The disposition was before the denunciation, by which nothing falls but the single escheat till after year and day. 2. No sentence hath followed upon that citation for crimes of reset, &c. And if *meditatio criminis* were sustained to disappoint rights granted and confirmed before committing the crime, (nothing) could be secure.

The matter ended in a transaction, though the Creditors appear to have been well founded in law; but it was considered that they lay under the danger of a new forfeiture of their debtor upon the ground of 'harbour and reset,' before the disposition.

*Harcarse, (FORFEITURE.) No 497. p. 137.*

1687. *December 15.* LADY SALTOUN *against* E. of DUMBARTON.

## No 36.

Debate, in a competition with a donatar of forfeiture, whether the act 1584 applies only to inferior vassals, or likewise to the immediate vassals of the Crown; not decided,

A LETTER from the Lords of the Treasury, in favours of the Earl of Dumbarton, is read, requiring the Officers of State to concur with him in getting that point which he had in debate with the Lady Saltoun, decided in his favours, viz. that the bygone annuities of her liferent should not affect the lands of Saltoun, in prejudice of the King and him as donatar, it being a leading case: And the King founded on the 3d act 1584, that bygone feu-duties and annuals, in cases of forfeiture, are presumed paid.

1688. *February 24.*—This day, and the two preceding forenoons, were much taken up with the debate betwixt the Lady Saltoun and the Earl of Dumbarton, who was donatar to her son's forfeiture, for the bygones of her liferent, as mentioned 15th December 1687. *Alleged*, By the 2d act 1584, anent the quinquennial retour, all bygones are presumed to be paid *præsumptione juris et de jure*, because the rebel and his friends will abstract the discharges to defraud the King, and so *lex statuit super præsumpto*. *Answered*, The case of that act is