

SECT II.

Action lies at Common Law for redress, where the Barons of Exchequer are guilty of partiality in completing gifts proceeding from the Crown.

1699. February 12. VISCOUNT of TIVIOT *against* EARL of LINLITHGOW.

No 308.

IN a competition between two gifts of forfeiture, presented to be past in Exchequer about the same time, the Barons having given an undue preference to the last gift, whereby it came first to be completed by infestment, a reduction was brought before the Court of Session, at the instance of the first donatar, and the question turned upon the competency of the Court. On the one hand it was *pleaded*, That the Exchequer was a Sovereign Court, and though the preference given by them to the last gift was not properly *res judicata*, yet it was such as precluded the cognition of the Court of Session, the Exchequer being in use to prefer, without regard to priority of dates, and having a power to qualify, alter, and restrict the King's gifts.—It was *pleaded* on the other hand, That it was no actual jurisdiction in the Exchequer to pass gifts, they acting therein in no other shape than as any Nobleman's commissioners who is out of the kingdom.—THE LORDS made a distinction betwixt gifts of escheat, which are within their commission, and which the Exchequer may grant or not, as they please, and gifts of forfeiture, which can only be past under the King's hand; and though the consent of Exchequer be requisite to the consumation of gifts of forfeiture, yet this is only as a step of diligence, in which the Exchequer ought to act impartially; and if they do otherwise, an action for remeid must lie at common law.—THE LORDS found themselves competent to judge in this case, and afterwards preferred the first gift.

Fol. Dic. v. 1. p. 507. Fountainball.

* * This case is No 1. p. 5109. *voce* GIFT of FORFEITURE.

1697. December 28. HOWIESON *against* LADY KINNAIRD.

No 309.

A CREDITOR having obtained from the Exchequer a gift of the single and life-rent escheat of his debtor, the same was burdened with 2000 merks a-year to the debtor's lady, which was the jointure she had by her former husband, and which belonged to the present husband *jure mariti*. Another creditor obtained a second gift, at the passing of which the lady compeared, craving it might be