

No 88. trary to the nature of his right, as it would be to the nature of a tack to want a tack-duty; and so the Lords had found, that a perpetual discharge of a feu-duty was not good against a singular successor, 19th November 1679, Lady Blackbarony against Borrowman, No 82. p. 10272.

Answered, There was here a feu-duty, to wit, the L. 7 Scots which was not discharged, and there was nothing to hinder this from being separate from the superiority by disposition, as in church lands the King was superior, but the feu-duty was payable to the Lord of erection; the feu-duty here was disposed to be held by a separate tenure, and there was an infeftment upon it, which behoved to make the conveyance effectual against the purchaser of the superiority; nor could it make any difference, that it was granted to the vassal himself, who might hold it as well as another, and who indeed might alienate it without alienating the lands, in which case he would have a feu-duty to pay.

THE LORDS found, That the feu-duty of L. 7 Scots behoved to be insert in the feu-charter to be granted by the superior to the defender, payable to the superior, pursuer, or to the person who had or should have right to the infeftment, proceeding upon the disposition of the feu-duty by Robert Hamilton of Airdrie the pursuer's author.

Reporter, *Drummons.* Act. *R. Craigie.* Alt. *A. Macdonall.* Clerk, *Murray.*
D. Falconer, v. 2. No 270. p. 363.

S E C T. VII.

Effect of Fraud—of Force and Fear—of Simulation of a Gift of
 Escheat—of Spuilzie—of *Pactum contra Fidem*—of Minority—of
 Reduction *ex capite lecti*—of *Donatio inter Virum et Uxorem*—of Pay-
 ment to an Adjudger.

No 89. 1617. February 28. EARL of TULLIBARDINE *against* DALZIELL.

IN an action between the Earl of Tullibardine and James Dalziell, the LORDS found, that the exception of simulation of a gift of escheat, taken upon the expenses of the rebel, could not be opposed against the assignee, who being a creditor, had acquired the same to his own behalf, except it were proven that the assignation were also simulate.

Fol. Dic. v. 2. p. 70. Kerse, MS. fol. 543.