

1630. June 18.

Countess of Abercorn's TENANTS *against* NISBET and FULLERTON.

THE Countess of Abercorn's Tenants raised a suspension of double-poining, alleging that they were distressed for payment of their mails and duties, by James Nisbet on the one part, and Sir James Fullerton, donatar to the Lady's liferent escheat, on the other. *Alleged* for James Nisbet, He ought to be preferred, because he had obtained decret against the Lady for L. 3000, upon the which he had arrested the farms in the Tenants' hands, and had recovered decret against them *in foro contradictorio*, for making of the same forthcoming long before Sir James's gift; and so he being a lawful creditor, in respect of priority and greatest diligence, must be preferred to the donatar, whose gift is long posterior. *Answered* for James Fullerton, He must be preferred by virtue of his gift, and declarators general and special following thereupon, against the Countess and her Tenants, notwithstanding of the priority of the said decret, because his gift and declarator must be drawn back *ad suam causam*, viz. The Countess her rebellion, whereupon the gift is granted, whereby *jus erat acquisitum Domino Regi* in such manner, that from the first moment of her rebellion, all that belonged to her pertained to the King, and consequently to his donatar. THE LORDS preferred the Creditor.

No 22.  
Arresting creditors were preferred to a posterior donatar of escheat, although it was pleaded, that the gift and declarator must draw back *ad suam causam*, which was prior to the arrestment.

1637. February 24.—THE same was found bewixt John Pilmour creditor to Alexander Clerk, and who had arrested some money of the said Alexander's in Nicol Cairncross's hands, and obtained decret against the said Nicol to make it forthcoming before the Sheriff-depute of Forfar; and Alexander Guthrie of Craigie, donatar to the said Alexander Clerk's escheat, wherein the creditor that had arrested and gotten decret before the gift and declarator, was preferred.

*Spottiswood, (ESCHEAT.) p. 104.*

\* \* \* This case is reported by Durie, No 38. p. 3643.

1672. January 6. SIR ROBERT SINCLAIR *against* SIR JAMES COCKBURN.

SIR ROBERT SINCLAIR, as assignee by the Earl of Rothes to the gift of the liferent-escheat of the Earl of Gaithness, whereupon decret of general declarator has followed, does now pursue for mails and duties in a special declarator; wherein compearance is made for the Laird of Cockburn, as having right to an apprising led against the Earl of Gaithness; and alleges he ought to be preferred, because the said apprising is prior to the rebellion, and albeit it have no infestment or diligence, yet by the infestment upon the first apprising, the Earl

No 23.  
If a donatar of liferent escheat had right also to a first apprising, it seems to have been held, that in a question with a second appriser, he must ascribe his possession to the apprising, not to the gift.