

growth of the corns yearly, for the which he was pursued, the teinds, taxation due to the King for the lands, and the feu-duty paid to the superiors of these lands; and the donatar *alleging*, that these ought not to be defalked, THE LORDS found all the defalcations reasonable, and found that the same should be defalked to the donatar, out of the first end of the corns craved from this rebel, after probation, and in the end of the cause, except for the seed of the last year's increase, acclaimed by the donatar, which ought not to be deducted that year.

Act. *Nicolson & Aiton.*Alt. *Stuart & Macgill.*Clerk, *Gibson.**Fol. Dic. v. I. p. 253. Durie, p. 513.*

No 11.

1631. *March 10.* FRANCIS STUART *against* LA. SAMELSTON.

THE abbot of Coldinghame having set a tack of the teinds of Swinton to Hercules Stuart and his spouse, and the longest liver of them two respectively, for their lifetimes, and after their decease, to an heir during that heir's lifetime, and thereafter, for 19 years to that heir's heirs and assignees; Hercules, first and principal tacksman, being forefaulted, the gift of this forefaulture is disposed to Sir William Hume, in so far as concerned this tack, and by virtue whereof he is in possession of these teinds. Sir William being at the horn, the gift of his single escheat is granted to Mr Robert Foulis, who having made Alexander Hamilton assignee thereto, and he having transferred his right to Francis Stuart pursuer, son to John Stuart of Coldingham, who by virtue of the said escheat of Sir William Hume claiming right to the said tack, as falling under the said single escheat of the said Sir William who was donatar to the said forfaulture, so far as concerned the said tack, pursuing the La. Samelston as heir to the said Sir William, for the said teind-sheaves, which were intromitted with by her; and she *alleging* that the said tack being set, for sundry liferents, whereof there was one of the liferent tacksmen yet living, viz. the heir of Hercules Stuart, it fell not under the single escheat of the said Sir William, donatar to the forfaulture; for by the 15th act, Parliament 22d, James 6. 1617, it is statute, that liferent tacks shall not fall under single escheat, and the donatar's rebellion cannot cause that fall under escheat, which of its own nature is not comprehended under the same, as a liferent tack is; for albeit the donatar to his estate might have right to the teind-sheaves contained in that tack, so long as the rebel lived, yet now after his decease, his heir must be in the full right of the tack, for all the space that was to run thereof, after the said Sir William his decease, by whose decease the escheat cannot extend further, but must cease. THE LORDS found, that albeit this tack contraverted, was set for liferents, whereby it could not fall under single escheat of the liferent tacksman if he had been rebel, conform to the act of Parliament, yet the tacksman be.

No 12.

A tack to one, and after his decease to his heir for each of their lives, and after that for 19 years, having fallen to the King by forfeiture of the first tacksman, and being gifted, was found in the person of the donatar to fall under his single escheat, though in the person of the tacksman it would have fallen under his liferent escheat. It was also found that the donatar being rebel, his heir had no right to the tack.

No 12.

ing forfaulted, and thereby the whole right of that tack devolved to the King, and to the donatar of the forfaulture, that forfaultry was of the same force, as if the tacksman had disponed the said tack, if he had never been forfaulted; in which case, if he had disponed the same, and that he had been rebel, who received the disposition, the same would have fallen under this single escheat, even so the donatar to the forfaultry being rebel, by his simple rebellion, albeit not year and day rebel, the donatar to his single escheat had the full right to the said tack, as if the same had been assigned; and found that the heir to the donatar of the forfaultry had no right thereto, but fell by his predecessor's rebellion totally, as said is; for the donatar to the forfaultry might have outlived the whole space of the tack, so that thereby it is evident, that it fell under his single escheat, and he might also have disponed the whole tack effectually, if he had not been rebel. And therefore as his disposition would have established the whole right to the acquirer of the same from him, the like did his rebellion to the king, and his donatar, and therefore the foresaid allegiance was repelled, for Hercules might have disponed the whole tack.

Act. *Stuart & Chairp.*Alt. *Nicolson, Lawrie, & Mowat.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 253. Durie, p. 579.*1632. July 24. JAMES RULE *against* L. BILLIE.

No 13.  
Found in conformity with  
No 6. p. 3616.

ONE JAMES RULE being donatar to the liferent of the Laird of Billie, and pursuing declarator thereon, the lands being holden of the Abbey of Coldingham, and the gift of liferent flowing from William Douglas his heir, who had the right of superiority competent to John Stewart, to whom the Abbacy of Coldingham was erected, in this process, James Renton, who had acquired the right of the lands controverted from the L. Billie, by virtue of a comprising deduced thereon by a lawful creditor, who had disponed the said comprising to him, and by virtue whereof he had been also diverse years in possession; all this time the L. Billie being a free liege, not at the horn by the space of four years after the comprising; in respect whereof he *alleged*, That the donatar nor superior had no right to the liferent of these lands, being comprised, as said is, before the rebellion from the vassal, and the compriser in possession, and which comprising must be also effectual to seclude the donatar and superior from the liferent, as if the vassal had by contract disponed his liferent, he then being at no horn, *quo casu* the subsequent rebellion of the vassal could never have prejudged the acquirer of the liferent in his right thereof, albeit no sasine, nor other deed had been done by the superior, to acknowledge the same.—THE LORDS repelled this allegiance, and found the liferent of the vassal's lands pertained to the superior, notwithstanding that the same were comprised, and possessed by the compriser before the vassal was rebel; in respect that the compriser was not *infest* nor seased by the superior in the lands, nor had the compriser charged