

the pursuer to receive him upon the comprising, without which the LORDS found, that the vassal becoming rebel, albeit after the comprising, forfeited his life-rent to the superior, wherein the preceding comprising did not prejudice him; for not the comprising, but sasine, makes the real right of lands, *no casu* even as if there had been two comprisers, the first infeft, albeit last comprising, would have been preferred to the first compriser. And the LORDS found, That the Lord of erection, his submitting of his superiorities to the King, prejudices him not of his casualties of that erection, but that the same pertained to him, he not being satisfied therefor by the King, which is the condition of the submission. It was also found, That Billie's life-rent escheat of his lands, holden of John Stewart, fell under John Stewart's life-rent escheat, albeit the time when John Stewart was rebel year and day, his vassal was not then rebel, but was rebel thereafter; also a compriser infeft before Billie's annual rebellion by the King, Billie's self being standing infeft by the King, by the act of annexation, prejudged not John Stewart, to whom that benefice was erected before that comprising, and infeftment of the comprisers thereon, seeing the King by that erection ceased to be superior, and John Stewart became superior, of whom he should have taken the infeftment, for by that erection, the annexation of that benefice was rescinded.

Act. *Stuart et Craig.*Alt. *Nicolson.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 253. Dnrie, p. 649.*

1634. February 4.

L. WEDDERBURN *against* STEWART of Coldingham, and Others.

JOHN STEWART of Coldingham, and Robert Douglas, who was donatar to John Stewart's life-rent, and which was declared, and whereby the said donatar had also right to the life-rent of the lands of ———, which pertained in feu to the L. Wedderburn, holden by him in feu of Coldingham, through Wedderburn's rebellion year and day, whereby the life-rent of these lands fell to John Stewart, and consequently to the donatar of the said John Stewart's life-rent, as a casualty accreting to the superior; and consequently coming under his life-rent, and so pertaining to the donatar; the said superior, and the said donatar recover decret, reducing and annulling the said L. of Wedderburn his feu of the said lands, upon the act of Parliament, for not payment of the feu-duty; which decret being desired to be reduced at the instance of the L. Wedderburn, upon this reason, That no such sentence could be sought, nor no such action pursued, at the instance of John Stewart, because the same was only competent by virtue of the alleged right of superiority of the said lands; and it was of verity, that before that pursuit he ceased to be his superior, in so far as he had resigned all his right of the superiority long before that pursuit,

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Actions for annulling feus, for not payment of feu-duty, are not competent to be pursued by the donatar of the superior's life-rent.

No 14. in his Majesty's hands, to remain with the King perpetually in all time to come ; and so that pursuit being an accident, befalling to the superior, and he not being superior, the decret recovered by him ought to fall. And the King's Treasurer and Advocate compeared, and concurred with the pursuer, and insisted on this reason ; and the defender *alleging*, That this reason was not competent to the party, and the King had no interest to pursue or concur, because the King pursued not this cause principally, and it could not be sustained by the concurrence of his officers ; attour, the King had a benefit by the reduction of the feu, for thereby the property of the lands did belong to him, by John Stewart's resignation ; whereas if the feu stood, and the decret reducing the same should fall, the King would get nothing but the feu-duty allenaryly ; which allegiance was repelled, and the King's concurrence sustained, and the reason found relevant to reduce that decret, obtained by the superior, after he was denuded of his superiority, in favour of the King, as said is. And the defender further *alleging*, That this decret could not be reduced, albeit John Stewart were excluded, seeing it was recovered at the instance of the donatar to John Stewart's liferent, to whom this casualty of his vassal's liferent fell, and which accresced to the donatar, who had obtained declarator upon that liferent of the vassal's, upon a pursuit moved at his instance therefor, before John Stewart's resignation of the superiority ; so that the donatar had competent action to pursue that action for annulling of the vassal's feu, sicklike as the superior's self might have done before the resignation ; for his liferent being gifted and declared before the resignation, it gave the donatar the same right as if the superior had disponed that casualty to him before resignation, *quo casu* the subsequent resignation, nor no deed done thereafter by the superior, could prejudge the donatar ; and therefore the decret ought to stand at his instance, at least the feu should fall or sleep, during the vassal's lifetime.—THE LORDS repelled this exception, and sustained the foresaid reason also, at the King's instance, as said is, against this donatar, for reducing of this decret controverted, in so far as it was obtained at this donatar's instance ; for the LORDS found, That actions for annulling of feus, for not payment of the feu-duty, were not proper to be pursued by the donatar of the superior's liferent ; these actions being of that kind, *quæ sapiunt naturam rerum hereditiarum*, which were not competent to donatars of liferents, whose rights being temporary, could not produce such actions against the vassal, to take away his property ; neither was it respected, that the donatar restricted the sentence to have effect only during the vassal's lifetime ; seeing the feu could not fall upon that reason of not payment of the feu-duty for that space, and thereafter revive again ; the cause being perpetual, and might be only urged by him, who was capable to bruike the property, as the donatar was not, who having, by virtue of the right of liferent, good right to the mails and duties of the lands, or to remove the possessors therefrom, could not conveniently seek this declarator of nullity to endure during his right only, as he retrenched it, seeing he might attain to the effect of that by virtue of his said right, by which

he had the sole power of the land, and the whole commodities thereof, during that space; and it was not well compatible to seek the full profits of the lands, as he had done, by recovering of sentences therefor, and also to seek the feu to be annulled, for not payment of the feu-duties; which feu-duties the rebel could not pay, being excluded from the lands by the donatar's right, and which were so in effect, rather liable to be paid by the donatar's self, who either might recover possession of the lands by law, or if the rebel did possess, might comprise the property therefor; and therefore the LORDS found, That the donatar could not in law seek any such action of nullity, for *ubi datur et competit ordinarium remedium ex jure* as here, *non recurritur ad extraordinarium*.

Act. *Advocatus et Nicolson.*Alt. *Stuart et Craig.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 254. Durie, p. 700.*

No 14.

1634. *March 22.* OCHILTREE *against* MILLER.

A DONATAR to a bastard's gift of single escheat, pursuing for payment of a sum owing to the bastard by heritable bond; the LORDS found this heritable bond fell under the gift of single escheat, and that it needed not to be conferred by presentation, there being no sasine, nor by no other manner of gift. *Item*, a bond of L. 100 subscribed by one notary only, was sustained, because it exceeded not that sum; and the LORDS interpreted matters of importance, which require two notaries, to exceed that sum, and not those which extend thereto, and no more.

Clerk, *Scot.**Fol. Dic. v. 1. p. 253. Durie, p. 717.*

No 15.  
An heritable bond, on which infertment has not followed, falls under single escheat.

1663. *February 4.* LAIRD PHILLORTH *against* LORD FRAZER.

SIR ALEXANDER FRAZER of Phillorth being in distress for debt, disposed his barony of Cairnbuilg to Robert Frazer of Doors; which lands of Cairnbuilg lye near to Phillorth, and the house thereof was his residence. In the alienation there is a clause conceived to this effect, that it shall not be leisom to the said Robert Frazer of Doors, to alienate the lands during the lifetime of the said Sir Alexander Frazer; and if the said Robert Frazer did in the contrary, he obliged him to pay to the said Sir Alexander the sum L. 10,000 for damage and interest, *ex pacto convento*, and if the said Robert should have ado to sell the said lands after the death of the said Sir Alexander, he obliged him to make offer thereof to the heirs and assignees of the said Sir Alexander, or any person he pleased nominate of the name of Frazer, for L. 38,000. The said Robert Frazer of Doors disposed the said lands to Stanywood, during the life of Sir Alexander

No 16.  
Single escheat found to reach a sum due as the liquidation of an obligation not to alienate lands; which sum was found *quoad fiscum*.