

1624. July 3. DICKSON *against* EARL OF GALLOWAY.

ROBERT DICKSON, donatar to the escheat and liferent of Hannah Mure of Arionland, pursued ane special declarator of the rebel's liferent against the Earl of Galloway, alleged possessor of the lands and teinds pertaining to the rebel, be the space of many years. In the cause the LORDS fand,

That he who is year and day at the horn, his liferent falls presently to his superior.

That a man being year and day at the horn, not entering to his predecessor's lands, hinders not thereby the superior to have the benefit of his liferent, as gif he was infest.

Ane tack appointed to be given after the expiring of ane preceding tack, has not ane certain entry, unless the new tack either make mention of the term of the first tack, or that the first tack be produced.

Ane tack is valid, albeit the entry be appointed to be many years before the date.

The defender *excepting* upon ane tack of lands and teinds, and many years in possession be virtue thereof, albeit the pursuer reply upon ane tack long anterior, and yet not expired and continual possession be virtue thereof, and content that he should be preferred being *in libello*; nevertheless in respect of the great soume he paid very many years, the LORDS admitted the exception for byganes, but prejudice of the pursuer's tack in time coming, as accords of the law.

*Fol. Dic. v. 1. p. 557. Haddington, MS. v. 2. fol. 243.*

\*.\* See Muir and Ahannay against Earl of Galloway, No 33. p. 3638,  
*voce* ESCHEAT.

1635. January 14. LINDSAY *against* LAIRD OF CORSHAW.

JAMES LINDSAY, donatar to the escheat of Alison Nisbet, pursues the Laird of Corshaw, debtor to the said Helen, for a sum of money owing by him to the rebel, by a summons of special declarator. It is *excepted* for the said Corshaw, That he made payment to David Nisbet, who was constituted assignee to his debt by the rebel, before the gift and general declarator. To which it was *replied*, That the exception ought to be repelled, except the assignation was made before the rebellion, because it was not lawful to the rebel *stante rebellione* to make an assignation or voluntary disposition, in prejudice of the King's Majesty, or his donatar, conform to the act of Parliament, James VI, Parl. 12. cap. 147. THE LORDS found the exception relevant to liberate the debtor, and the act of Parliament alleged *nullitatis causa*, only against assignations made in defraud of the creditor at whose instance the debtor is denounced rebel.

*Fol. Dic. v. 1. p. 557. Auchinleck, MS. p. 177.*

No 65.

Found in conformity with Cunningham against Laird of Buchanan, No 63. p. 8372.

No 66.

Found that a rebel may assign a debt, even after rebellion, provided it be before declarator, in prejudice of the King's donatar.