

1638. July 25. JAMES KENOWAY *against* RODGER MOWAT.

ONE James Kenoway being donator to the liferent-escheat of Patrick Austine, husband to Agnes Boyd, who was liferenter of a part of the lands of Gellies, and which she and her husband had set in tack, for payment of certain victual duty to be paid therefore yearly to them by the tenant; and Mr Rodger Mowat being assignee by the husband and the wife, after the rebellion, to the same tack-duty of the years 1636 and 1637, for a just cause of debt owing by them to him; contending which of them should have right to the said tack-duty; which the donator alleged he must have, as said is, by virtue of his gift, and whereupon he had intented declarator presently depending, which is only impeded by this same assignee; likeas the tenant produced a discharge, granted by the donator of the crop 1636, which he alleged should liberate him, being paid before any intimation or knowledge of the assignee's right: And the assignee alleging that this payment could not defend the tenant, being only made voluntarily, without any necessity of law; and there being no declarator, neither general or special, at the donator's instance, it cannot be sustained that the tenant should, without sentence or legal compulsion, invert his master's possession: And the donator alleging that he ought to have the year already paid, allowed to the tenant, and ought to be answered of the other year controverted, in respect that his general declarator was only stopt by the assignee's compearance;—the Lords, in respect the payment was made for the first of the years controverted by the tenant, before he was interrupted by the assignee, allowed the same, notwithstanding that the escheat was neither generally nor specially declared; and, for the other year, in respect interruption was made by the assignee, and that it was not paid to the donator before, and that there was opposition made against the declarator; therefore they ordained the assignee to be answered of that crop, he finding caution to refund the same to the donator, *cum omni causa*, in case he prevailed in his declarator; seeing the assignation was made to a true creditor.

*Act.* Bruce. *Alt.* Mowat for himself. Gibson, Clerk.

Page 860.

1638. December 20. JOHN RENTOUN *against* RENTOUN of LAMBERTOUN.

UMQUHILE John Rentoun of Lambertoun, being married upon one Hume, father-sister of Huine of Rentoun, to his second wife; by contract of marriage he is bound to infeft her in certain lands, during her lifetime; and the said umquhile John Rentoun the husband being deceased, she makes the said Laird of Rentoun assignee to the said contract, who pursues registration of the said contract against John Rentoun, eldest son to the said umquhile John Rentoun her husband, contractor, and convenes him as successor to his father *titulo lucrativo post contractum debitum*; and, for verifying of him to be so successor, produces a bond granted by the defender to his umquhile father, of this tenor, *viz.* for sa meikle as his said father had provided and given way (thir are the words,) to his provision to the lands of Lambertoun; therefore he obliged him to relieve his father