

## No 46.

donatar's right; therefore, in a competition betwixt a gift of single escheat and an assignation granted before rebellion, the right first intimated will be preferred.

whilk action compearit the said William Burn and *alleged*, That long before the committing of the crime wherefore the said Earl was put to the horn, he had coft all and hail the said farms, at the least 24 chalders thair of perseued be the said Francis, fra the said Earl, and had given him the maist part of the price thereof, and had obtained the said Earl's precept, direct to the tenants and fermours, payers of the said fermes, to answer the said William thair of; whilk precept the said William lawfully intimate to the said tenants, who promittit to pay the said William the said fermes; and all this was done before the committing of the said crime, except the intimation to the said tenants, and their promise to pay, which was done before the execution of the said horning upon the said Earl, as said is; whilk allegiance of the said William Burn was found relevant be the LORDS, and admittit to his probation, notwithstanding the allegiance of the donatar, *de quo supra*.

*Fol. Dic. v. 1. p. 255. Maitland, MS. p. 169.*

## No 47.

Found as above.

1614. February 11. CLERK *against* NAPIER.

IN an action of special declarator, pursued by John Clerk, donatar to the estate of John Cuthbert, *contra* William Napier of Wrightshouses, the LORDS found that, a declarator made by John Cuthbert before the rebellion, that the hail sums pertained to William Napier, which also contained an assignation to the sums, could not prejudge the King's donatar, because it was not intimated.

*Fol. Dic. v. 1. p. 255. Kerse, MS. fol. 53.*

## No 48.

Found as above.

1642. February 12. MOSMAN *against* TENANTS of Monkcastle.

KATHARIN MOSMAN, donatar to her husband James Nisbet's escheat, charges the Tenants of Monkcastle for payment of some money contained in a bond granted by them to her said umquhile husband, conform to a sentence of declarator obtained by her against them thereupon; and they suspending, *alleged*, That her husband in his own lifetime made an assignee to that bond, which was intimate to them, and to which assignee they made payment, and reported his discharges, with consent of the said James Nisbet in his own lifetime. This reason was sustained, albeit the wife *alleged*, That when the payment was made her husband was at the horn, so that his rebellion made the right to pertain to the King; which was repelled, seeing the payment was made with consent of the husband, before the gift of escheat disponed to the donatar, which they found only put the tenants debtors in *mala fide*.

Clerk, *Scot.*

*Fol. Dic. v. 1. p. 255. Durie, p. 893.*