

No 63. the vassal's rebellion; upon this infeftment, removing being pursued, the Earl compares and propones, that the vassal was year and day at the horn, therefore in respect of the provision foresaid, the pursuer cannot pursue removing, seeing he accepted the precept, with that clause. THE LORDS repelled this allegiance, in respect there was no declarator obtained of the vassal's liferent.

*Fol. Dic. v. 1. p. 256. Durie, p. 891.*

1667. February 21.

ROBERT MILN *against* CLARKSON.

No 64.

Found in conformity with  
No 61. p.  
3662.

ROBERT MILN, as donatar to a liferent escheat, having obtained a general declarator, insists now in a special declarator for mails and duties. It is *alleged* for Clarkson, That the pursuer has no right to the mails and duties, because he stands infeft before the rebellion. It was *answered*, Any infeftment Clarkson has, is but a base infeftment, never clad with possession till the rebellion, and year and day was run, and so is null as to the superior or his donatar. It was *answered*, That the base infeftment is valid in itself, and albeit by the act of Parliament 1540, a posterior public infeftment for causes onerous, be preferable, yet that cannot be extended to the right of a liferent escheat, or to a donatar. It was *answered*, That by the course of rebellion year and day, the superior's infeftment revives as to the property, during the rebel's liferent, and cannot but be in as good condition as any posterior public infeftment; and it was so decided, Lady Renton *contra* Blackader, No 61. p. 3662.

THE LORDS found that the base infeftment, though prior to the denunciation, not having attained possession within year and day, could not exclude the liferent escheat.

*Fol. Dic. v. 1. p. 256. Stair, v. 1. p. 448.*

1672. January 19.

BEATON *against* SCOT of Lethem.

No 65.

Found in conformity with  
No 57. p.  
366c.

IN a double pointing, raised by the tenant of Etherny, betwixt Mr William Beaton, donatar to the liferent escheat of Rig of Etherny, and an infeftment of annualrent, holden of Etherny, and clad with possession before the rebellion, granted to Scot of Lethem, it was *alleged* for the donatar, That by the liferent escheat of Etherny, the fee of his lands returning to his superior, he or his donatar behoved to enjoy the same, free of any burden induced by the vassal, unless consented to by the superior, or approven by law. It was *answered*, That albeit it be true, that where fees return to the superior *ex natura feudi*, either by ward, non-entry, or recognition, they return as little burdened as when they were granted; but it is not so in the case of liferent escheat, which does not arise from the nature of the feudal contract, but from statute or custom, upon disobedience to law, or civil rebellion, which is not a feudal