

LORDS found, that the farms of the rebel's own labouring pertained to the donatar, by virtue of that same gift; and albeit the gift was given in August, yet that it extended to the whole farms of that crop which were in the rebel's hands in mansing, even as, if he had died in August, not being rebel, the same would have pertained to his executors. See TERMS LEGAL and CONVENTIONAL.

Act. *Hope.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 346. Durie, p. 267.*

No 9.

1642. February 10. MOWAT against KEITH.

MR ROGER MOWAT, and one Keith of ———, son-in-law to Jean Guthrie, having either of them arrested the prices of some victual, addebted to the Laird of Ludquhairn, and contending for preference, Mr Roger craves to be preferred, because he was both creditor to Ludquhairn, and donatar to his escheat.—THE LORDS found, he could not crave preference as donatar, because he was donatar only to his simple escheat, under which they found that nothing could be comprehended but moveables, which then, at the time of the gift, and a year thereafter, only should pertain to the rebel; and the victual now controverted was of a crop five or six years subsequent after the gift, and so that it could not pertain to the donatar of the rebel's simple escheat; and they respected not the tenor of the gift, which disponed expressly all the rebel's goods, which he should acquire at any time thereafter during his rebellion, and that he was still rebel, which was not respected.

Act. *present.*Alt. *Gilmore.**Fol. Dic. v. 1. p. 347. Durie, p. 892.*

No 10.
Found, that a gift of single escheat could extend no farther than to the moveables belonging to the rebel at the time of the gift, and a year thereafter.

1669. July 2. BOW against CAMPBELL.

Bow, stabler in Edinburgh, as assignee to a sum of money due by Glenurchy, and also as donatar to the escheat of his cedent, being called in a double poinding, and competing; the donatar *alleged* he ought to be preferred to the arrester, because the debt in question falling in his cedent's escheat, he had taken the gift of the escheat, bearing expressly all goods the rebel had or should acquire, and this debt being acquired after the gift, did accresce to him, the rebel not being yet relaxed. It was *answered*, That though the stile of the gift bear all goods to be acquired, yet that is always interpreted such as happen to be acquired within year and day after the horning. It was *answered* for the donatar, That he opposes the tenor of his gift; and if any limitation could be there-

No 11.
Gifts of escheat, bearing all goods to be acquired, extend only to goods acquired within year and day of the gift.

No 11.

of, it could only be of sums to be acquired within a year after the gift, and not within a year after the horning, because sometimes gifts are not taken within a year of the horning.

THE LORDS found the gift to extend to the sum in question, being acquired by the rebel within a year after the gift, and that the general clause of goods to be acquired, did extend no further than to goods acquired within a year after the gift.

Fol. Dic. v. 1. p. 347. Stair, v. 1. p. 629.

1672. December 13. LORD LYON *against* The FEUARS of Balveny.

No 12.

A donatar of escheat cannot enforce payment of bonds granted to the rebel under conditions unperformed, altho' these conditions do not appear *ex facie* of the deeds.

SIR CHARLES ARESKINE having obtained a gift of the escheat of the late Lord Salton, and general declarator thereon, pursues a special declarator against some feuars of the barony of Balveny, who had granted several bonds; of which some were *ab initio* in the name of the Lord Salton, which were conditional, bearing, that the sum should be paid so soon as they should obtain confirmations of their feus from the Laird of Blackhall, who then stood in the title of the barony of Balveny; and others were blank in the creditor's name; and being produced by Alexander Abernethy, he deponed that he had received the bonds for the use of the late Lord Salton, and that they were granted for confirmations to have been obtained to the feuars of Balveny, which also was deponed by the debtors in the bonds, and by Blackhall's commissioners who had power to componse with the feuars for new confirmations of their rights, which were under reduction; whereupon the donatar now insists against the feuars for payment of these sums, who made no opposition; but compearance was made for Arthur Forbes, whose interest was founded in this manner: The barony of Balveny did belong to the house of Salton; and, for shunning to be heir, the late Lord Salton granted a bond to Blackhall, whereupon he apprised the barony to the behoof of the Lord Salton, and did grant commission to the Laird of Philorth, Cromarty, Achmedden, and the said Alexander Abernethy, to componse with the feuars for giving them new confirmations, and thereupon they did agree with him, and got the bonds in question from them, which were delivered to the said Alexander Abernethy for the use of the Lord Salton; likeas, the said commissioners granted bonds of that same date, obliging them to cause Blackhall grant confirmations, and thereafter the Lord Salton did borrow from Philorth younger, now Master of Salton, L. 38,000, and gave him a disposition of the barony of Balveny; likeas, the Master gave a back-bond of that same date, bearing, that the Lord Salton had procured to him a disposition of the barony of Balveny from Blackhall, and another disposition thereof from Kinminnity; and therefore, at my Lord's desire, he became obliged to denude himself in favours of Blackhall, upon the payment of L. 38,000, and likewise obliged himself to use all diligence for componsing with the feuars at such rates,