

1677. November 23.

CUNNINGHAME *against* GORDON.

JAMES CUNNINGHAME as donatar to the single escheat of William Wood, pursues William Gordon to denude himself of a shop and cellar, which were bought by William Wood *stante rebellione*, and so must be presumed to have been acquired by the moveables or money of the rebel, belonging to the King by the escheat, whereby it is surrogate in place of these moveables; for if this practice be sustained, all the benefits of escheats may be easily evacuated. It was *answered*, That whatever might be said against the rebel himself upon such a presumption, yet it imports no real right affecting the lands or heritable rights, which the rebel acquired, upon pretence of surrogation; but can only infer a personal conclusion against the rebel, to make payment of the price he paid, or to shew that it was paid otherways than by the moveables; but can have no effect against the ground, or any singular successor, acquiring from the rebel who was the first purchaser; and in this case the donatar can have no pretence, because the rebel bought this shop and cellar from William Gordon, and for not payment of the price did repon him; for the single escheat hath never been extended to the rebel's money or moveables, by buying or selling, against the purchasers; otherways no man might sell land without enquiring, whether the buyer was at the horn, which no man ever dreamed of; yea the rebel's creditors getting payment voluntarily, or by legal execution, of debts due by the rebel before rebellion, satisfaction being obtained before declarator, have ever been secured against the donatar.

THE LORDS found the defence relevant, and assoilzed.

*Stair, v. 2. p. 594.*

1684. January 23.

CORNELIUS NEILSON *against* KENNEDY.

CORNELIUS being donatar to the liferent escheat of ———, and the rebel five or six years after the gift acquiring the right of a sum of money owing by bond, and the donatar claiming the said sum in a special declarator, as falling under his gift of the liferent; and it being *alleged*, That it would belong either to the donatar of the single escheat made since the date of that bond, or else be yet at the King's gift and disposal; the LORDS found nothing fell under the compass of the liferent escheat, but only his current liferent, and what moveable sums he acquired within year and day after his gift; and for this that there was *locus secundo donatorio*.

*Fol. Dic. v. 1. p. 347. Fountainhall, v. 1. p. 263.*

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No 14.

A donatar of escheat found not to have right to a tenement bought *stante rebellione* by a rebel, on presumption that it was bought by moveable sums, falling under escheat.

No 15.

A gift of escheat must be restricted to what was due to the rebel at the time of the gift, and within year and day thereafter.