

1686. *November 17.*A. *against* B.

No 43.

THIR two questions were agitated in the Session. *imo*, A rebel's escheat is gifted and declared, but year and day after the denunciation he gets a bond in his own name, and a creditor of his arrests the sum in this bond; the donatar also claimed it; Against whom it is *alleged*, nothing falls under the single escheat but what belonged to the rebel the time of the denunciation, or accresced to him within year and day thereafter. President Lockhart, in a case of the Earl of Breadalbane's with some creditors, thought, if a second donatar were made, he would carry it; and even as it stood, he preferred the first donatar to the arrester; which some thought hard.

2do, One arrests a sum due to a rebel; the donatar of his escheat is paid off his debt, but the second in the back-bond craves to be preferred to the arrester, as being *in eodem corpore*. It was thought he ought to be preferred to the arrester.

Fol. Dic. v. I. p. 255. Fountainball, v. I. p. 428.

1707. *March 27.*

WILLIAM HENDERSON Merchant in Edinburgh, *against* ALEXANDER ALISON
Writer to the Signet.

No 44.
Found in
conformity
with Kirkness
against For-
ster, No 35.
P. 3641.

HARRY CRAWFORD's share in the African Company being found arrestable at the instance of Alexander Alison his creditor, in order to oblige the directors to transfer the same in favours of the arrester, (*vide* March 18 1707. Alison *contra* the Directors of the African Company, *voce* SOCIETY,) William Henderson donatar of Crawford's escheat compeared for his interest, and claimed to be preferred to Mr Alison.

Alleged for Mr Alison; That by Act 8th, Parliament, 1695, the shares of the capital stock of the African Company are exeemed from confiscation, &c. and only transferable by the Company's assignments, except that they may be affected by the real diligence of the proprietor's creditors: And the donatar of his escheat is not a creditor who has affected the same by real diligence, or got a voluntary transfer in his favours. Besides, these things only by our law are escheatable *quæ possunt referri in fiscum*, and which of old could be uplifted, and intromitted with by the treasurer's letters of intrommission, under which denomination the Company's stock that was in effect mortified and not upliftable by the partners themselves, cannot fall; and therefore the gift of escheat cannot take place. Nor is it disanalogous to our law to declare this