

the gift of umquhile Isobel Kid's escheat upon a horning, whereby she was denounced to the horn upon general letters raised at the said customers' instance, for not-payment of his custom for certain years, extending to such a sum contained in the execution of the charge; and, seeing the defender had taken her escheat upon this horning, he ought to pay the debt for the which she was denounced rebel. It was alleged, The horning was null, because she was charged by general letters, whereupon no denunciation could follow, conform to the Act of Parliament. *2do.* She was wrongously charged for the customs of the years contained in the charge, because she was in these years married, and could not be summarily charged, after her husband's decease, for a debt due to be paid by her husband. To the which it was replied, That this party could not object this nullity, seeing he had taken the gift of her escheat upon the same horning, and, by virtue thereof, has intromitted with her goods and gear, and by no other title. To the which it was duplied, That the horning being null, could never give him right to intromit with the goods, nor make him liable to pay the debt contained in the horning; but he might renounce all benefit of that escheat. The Lords repelled the exception and duply, in respect of the reply; and specially of his intromission by virtue of the gift,—the pursuer finding caution to make this debt acclaimed by them furthcoming to all parties having interest.

This action was decided by one vote.

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1631. *March 24.* ELIZABETH DOUGLAS, Daughter and Heir to William Douglas, Donatar to the Escheat of John Stewart, *against* The TENANTS of COLDINGHAME.

THE declarator of the gift of escheat and liferent, obtained at the instance of the father;—if his heir pursue any action thereupon, he needs not to transfer the said declarator, but use it for instructing his title.

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1631. *March 24.* The LORD ADVOCATE *against* The KING'S VASSALS.

THE Advocate pursues certain of the King's Vassals, for improbation and reduction of their infeftments of the King's annexed property, contained in the Acts of Parliament made by James II, Par. 11, cap. 41; James III, Par. 9, cap. 71, Par. 14, cap. 112; by James V, Par. 6, cap. 84, Par. 7, cap. 115; and James VI, Par. 13, cap. 176, contained in the last imprinted Acts; and the unannexed property, whereof count has been made in the Exchequer since the year of God 1455, which has been taken in feu with diminution of the rental, and omission of their marriages, contained in the former infeftments. Which last part was not sustained, in respect of the generality of the libel, except the Advocate should condescend upon the lands in special, whereof count had been made in the Exchequer.

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