

him to the rebel; in satisfaction for so much of the other debt of 11,000 merks *pro tanto*, wherein he was cautioner for the rebel, to the rebel's creditors, he being distressed therefor; and the LORDS admitted this against the fisk and his donatar, albeit *regulariter* in our practice, the fisk pays none of the rebel's debts.

Act. *Gibson.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 163. Durie, p. 749.** * See This case by Auchinleck and Spottiswood, *voce* ESCHEAT.

No 75.

1635. February 24. L. HALLGREEN *against* ———.

RAIF of Hallgreen, as donatar to the escheat of umquhile L. Dunnipace, after general declarator, pursuing a special declarator against certain defenders, for payment of certain bolls libelled, of teinds addèbted by them to Dunnipace, of certain years before his decease; and one of the defenders *alleging*, That the said rebel was debtor to him in sums of money, before the gift granted to the pursuer, so that he had just cause of retention of these teind-bolls libelled, in his own hands, for his own payment *pro tanto*; for it must be to him in that same case as if he had delivered the same to the rebel, and reported his discharge thereupon, before any declarator specially intented against the defender therefor, *quo casu* the gift and general declarator could never have put him in *mala fide*, far less can his retention for a just cause of debt, preceding the gift, be quarrelled. This allegiance was found relevant to liberate the defender. And it being *alleged* for John Livingston, burgess of Edinburgh, another defender; for another quantity of the teind-bolls acclaimed, That the rebel had disponed the same to him for just debt, owing by the laird to the excipient; which being done before the execution of the summons of special declarator, it must be sufficient to him, who is a distressed creditor of the rebel's, and hath no other means of satisfaction, especially seeing the rebel remained still in possession of his own teinds all this time, which might easily warrant the defender to receive this disposition. This allegiance was repelled, seeing the disposition did neither precede the gift of the rebel's escheat, nor the general declarator, but was made after them both. See ESCHEAT.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 163. Durie, p. 758.*

No 76.

A donatar of escheat, after general declarator, insisting in a special declarator, for teind-bolls, addèbted by the defender to the rebel; retention was sustained upon a liquid debt owing by the rebel to the defender before the rebellion.

1669. January 23. MR JAMES DRUMMOND *against* STIRLING of Ardoch.

MR JAMES DRUMMOND being donatar to the escheat of the Laird of Glenegies, pursues exhibition and delivery of a bond granted by George Musher to James Henderson, containing 2000 merks principal, and by him assigned to

No 77.

Compensation sustained against the donatar of