

No 2. sued John Erskine of ———, who obtained the gift of Carden's escheat upon the said horning, to pay to him the said sums contained in the horning, whereupon he took the escheat conform to the act of Parliament. The summons was found relevant, notwithstanding divers allegiances. Thereafter, John Erskine *alleges* that he could not be decerned to pay the said sums, because he had never intromitted with any of the rebel's goods, neither had he obtained any declarator upon the escheat, but was stayed in the declarator by a son of the Master of Elphinston's, and so unless he would cause his son renounce he could not be decerned to pay the sums, seeing it might be he prevailed not in the declarator. The action was interrupted by the decease of the laird of Carden.

Fol. Dic. v. I. p. 253. Haddington, MS. No 632.

1603. February 9.

STALKER *against* MURRAY.

No 3.
Found as
above.

STALKER having denounced his debtor called Shaw, to the horn, whose escheat was taken by George Murray, Stalker pursued George Murray to make payment of his debt contained in the said horning, whereupon he had taken the said gift of escheat, conform to the act of Parliament 1592, Cap. 145.—It was *excepted* by the donatar, That the summons was not relevant, because he had neither intromitted with the rebel's goods, nor obtained declarator of the escheat; and so, unless the pursuer would either allege, that he had intromitted or obtained declarator, he should have no process, in respect of the 145th act of the said 12th Parliament, seeing a donatar could be in no worse case than the treasurer; and the treasurer would never be holden to pay the rebel's debt, except he intromitted with the goods, and therefore the donatar behoved to have the like benefit.—Notwithstanding whereof, the LORDS repelled the allegiance, and found process, unless the donatar would either pay the debt contained in the horning whereupon he took his gift, or else would renounce the said gift.

Fol. Dic. v. I. p. 253. Haddington, MS. No 676.

1631. March 15.

FLETCHER *against* KID.

No 4.
A donatar of
escheat is not
allowed to re-
nounce after
intromission.
Neither can
he defend
himself a-
gainst pay-
ment, by
pleading the

JANET KID in Dundee being denounced rebel at Fletcher's instance, who was tacksman of the customs, upon general letters raised by the customers, and she being, by virtue thereof, charged to pay a particular sum, contained in the execution against her, and denounced for not payment thereof, the charge being on twelve hours; whereupon one taking her escheat, the said Fletcher pursues the donatar to pay the debt of the horning, whereupon he had taken her escheat; and the donatar alleging the horning to be null, because she was de-