

## S E C T. V.

## Competition Single Escheat with Arrestment.

1611. February 6. TENANTS of KIRKNESS *against* FORSTER, &c.

IN a triple poinding, pursued by the tenants of Kirkness against Foster, relict of umquhile George Douglas on the one part, Balfour *alleging*, That umquhile George, by his registrate bond, was addebted to him in sums of money, whereupon he had charged and denounced him, and had arrested the sums, mails, and duties of his lands, for payment of his said debt, and had obtained decret adjudging the same to have been competent to him on the second part. And Philp, donatar to the said Sir George's liferent of the said lands, constitute by the Earl of Morton superior of the samen, contending for the mails, sums, and duties, of the saids lands, the LORDS found, that Balfour should be answerit and obeyed, in respect of his registrate bond, arrestment, and pursuit, to make the sums forthcoming to him, and litiscontestation made in his cause, before the donatar obtained declarator; albeit the corns controverted were of a crop long after the rebel had remained year and day at the horn; and that the donatar had gotten his decret of general declarator of the said liferent before the arrester, and the corns to be made forthcoming. My Lords President, Chancellor, Nelston, and almost the hail rest, voted all for the arrester, except the Clerk of Register, myself, and one or two more. The direct contrary of this practic was decided betwixt Mellestoun and Archibald Hume of Bassendene.

*Fol. Dic. v. 1. p. 255. Haddington, MS. No 2146.*

1623. February 27. THOMPSON *against* HALIBURTON.

THOMPSON, assignee to a bond made by the Laird of Murthill for a thousand merks, to be paid at Whitsunday 1620, and if he failed to pay at the term, binding him to pay ten for the hundred termly, as well not infest as infest, with power to the lender to crave his money at any term;—Thompson arrested Murthill's farms, and summoned him and his tenants to make them furthcoming. Compeared Mr George Haliburton, *alleging*, That he had an anterior bond registered, and had arrested after Thompson, and had denounced Murthill, obtained the gift of his escheat, and a general declarator, and so should be preferred. Thompson *replied*, That he had affected the goods by arrestment before Haliburton's arrestment, and so should be preferred, being a lawful creditor preventing the other in affecting their farms; that Haliburton's bond

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## No 35.

The gift of escheat is equivalent to an assignation, of which general declarator is the intimation; and, therefore, in a competition with arrestments, the donatar or arrester is preferred according as the general declarator or arrestment is prior in time, provided the arrestment be upon a debt prior to the rebellion.

## No 36.

A donatar of escheat declared in general, was preferred to one arresting after the gift, before declarator, for a debt due before the rebellion, upon this specialty, that the donatar's gift proceeded upon his own horn, and he obtained de-