

ing. To which the answer was satisfying, That the disposition being once supposed simulate at the date of the creditor's horning, it could not, by the act of attaining possession on it thereafter, become effectual in prejudice of the intervening horning.

No 254.

*Fol. Dic. v. 4. p. 127. Kilkerran, (PRESUMPTION.) No 2. p. 426.*

---

S E C T. II.

Gift of Escheat, when presumed simulate.

1605. June 27. GAVIN HOME against ALSCHIE HOME.

IN the declarator of the escheat of David Home of Blackadder, betwixt Gavin Home and Alschie Home; it being *objected*, That Alschie's gift was null, as simulate, purchased to the behoof of the rebel by the donatar, a conjunct person, viz. his goodsir, dwelling in household with the rebel, who was yet unrelaxed; the LORDS repelled the allégeance, unless the said Gavin would offer him to prove the simulation, and taking of the gift to the rebel's behoof with his own gear and upon his expenses, either by writ or oath of party; and found not the conjunction and remaining in house sufficient, without the foresaid probation.

No 255.

*Haddington, MS. No 859.*

1622. June 25. LO. BORTHWICK'S BAIRNS against their FATHER.

IN an action of declarator pursued at the instance of the Lord Borthwick's Bairns, as donatars to their father's escheat, the LORDS found the same to be null; seeing it was *alleged*, That it was simulate, taken to the rebel's behoof, in so far as it was taken to the behoof of his bairns, he remaining rebel, which was alike as if it had been taken to himself; which allégeance the Lords found relevant; but here, the bairns were *in potestate patria* unforisfiliate. *Vide* 20th March 1623, Dalgarno *contra* Earl Marishal, No 258. p. 11593. where the contrary seems to be done, except that the donatar was not *in potestate*.

No 256.

For the Pursuer, *Nicolson.*

*Fol. Dic. v. 2. p. 158. Durie, p. 27.*

\* \* \* Kerse mentions this case thus :

SIMULATION of an escheat sustained, proving the escheat to be taken to the behoof of the rebel's bairns.