

No 27. of any other superior?—But after long contention, the matter was casten off to a Parliament or longer deliberation.

Fol. Dic. v. 1. p. 254. Haddington, MS. No 631.

No 28. 1615. July 27. KINROSS *against* DRUMMOND.

IN an action pursued by Mr Henry Kinross against James Drummond, the LORDS found, That an office of Sheriff-clerkship fell in the King's hands, by rebellion of the said James.

Fol. Dic. v. 1. p. 254. Kerse, MS. fol. 219.

No 29. 1622. July 12. MAXWELL and GORDON *against* LAIRD of LOCHINVAR.

FOUND that a liferent of a Lady tercer pertains to the superior by her rebellion, albeit she had the terce by consent of party, and was never served nor kend to a terce.

Fol. Dic. v. 1. p. 254. Kerse, MS. fol. 221.

1622. December 20. HAMILTON *against* BRUCE.

No 30.
The liferent
escheat of an
apparent heir,
whose prede-
cessor died
infest in the
lands, falls to
the superior
of the lands.
See No 33.
p. 3638.

CLAUD HAMILTON and Matthew Hamilton, brother to Cochno, pursued for declarator of Alexander Bruce's liferent, of lands holden by him of Cochno; whereof Cochno had made the pursuer donatar. THE LORDS found, that not only the liferent of lands wherein the vassal was infest, but also wherein he had right to have been infest, and to have entered himself to by decease of his predecessor, to whom he might have been heir, pertained to his superior after the said apparent vassal's remaining year and day at the horn.

Fol. Dic. v. 1. p. 254. Haddington, MS. No 2715.

No 31. 1623. March 21. CUNNINGHAM *against* E. GLENCAIRN.

IN an action pursued by the L. Cunningham-head, assignee to the Lo. Kilmaers *contra* E. of Glencairn, upon a contract, whereby the E. sold to the Lo. Kilmaers certain lands, and obliged him to procure and deliver the renunciation of certain persons, who had wadsets of the saids lands; whereupon the Lo. Kilmaers charging, and the E. suspending, and finding caution the time of the suspension; the matter lying over suspended, he makes thereafter one assignee to the contract; who seeking transferring of that suspension, and act of caution

in him as assignee, the LORDS found the suspension and act of caution might be transferred, without any new charge, being all done *inter vivos*; and that there needed no other new charge, at the assignee's instance, but that the cautioner found in the suspension stood still bound: Likeas there being a horning produced, whereby Lord Kilmaers was rebel before the assignation made by him, and so remaining rebel then, as yet unrelaxed, it was *alleged*, That he could not make an assignation to prejudice creditors, as this was. This allegiance was repelled, because the LORDS considered that this was an assignation of an heritable right which the rebel might make, and that the act whereupon the allegiance was proponed, should be understood of moveable goods, and therefore the LORDS sustained the action at the assignee's instance, notwithstanding of the cedent's being then rebel. See LITIGIOUS.

No 31.

Act. *Dauling*.Alt. *Belsbes*.Clerk, *Scot*.*Fol. Dic. v. 1. p. 254. Durie, p. 60.*1624. *March 6.* DOUGLAS *against* L. EAST-NISBET.

WILLIAM DOUGLAS being donatar to the escheat and liferent of John-Stuart of Coldingham, and thereupon having obtained a declarator, intents action against L. East-Nisbet, for a declarator of East-Nisbet's liferent of the lands of East-Nisbet, as holden of John Stuart, and in which John Stuart's hands the said liferent was fallen, through the said L. East-Nisbet's remaining rebel year and day; the which liferent was acclaimed by the pursuer, as becoming in John Stuart's place, wherein he was surrogate by the said gift and declarator, and so whereby he might claim John Stuart's vassals liferent, as the said John Stuart might have done himself. This action was sustained by the LORDS, and they found that the same neither needed to abide continuation, nor any probation, that L. East-Nisbet was infeft in the lands holden of John Stuart, thereby to prove him to be his vassal, but found it sufficient to infer sentence as was desired, the pursuer producing John Stuart's sasine in the lands libelled, without any other probation, seeing if East-Nisbet was not his vassal, he might disclaim him, and that not being done, there was no necessity to produce L. East-Nisbet's own sasine.

No 32.

The liferent escheat of a subject upon which infeftment had not past, was found to fall to the King. See No 34. p. 3639.

1624. *March 9.*—IN the declarator pursued at the instance of William Douglas, as donatar to the liferent of John Stuart, whereof mention is made March 6th 1624, it being *alleged* for the defender in that process, viz. by the Viscount of Ayr, who was a donatar to that same liferent, that no declarator ought to be granted by virtue of the pursuer's gift, because John Stuart, for whose liferent the parties controverted, was not year and day vassal to the King, the time of the granting of the gift of his liferent to the pursuer, for his sasine was in December 1622, and the gift