

\* \* \* Haddington also reports this case :

No 257.

JOHN INGLIS pursued a declarator of the Lord Ochiltrie's escheat and liferent ; the Laird of Caprintoun, likewise donatar, opposed. THE LORDS fand, in that case, That a gift of escheat of all goods pertaining to the rebel the time of his declarator, and which he should acquire during his rebellion, would go no further than to that which pertained to the rebel the time of the gift of his escheat, and a year thereafter. They fand also, That a gift of liferent could comprehend nothing but that whereof the rebel had right of fee or liferent the time of the gift. They fand, That a gift taken *in anno* 1613, whereupon no declarator was sought by the space of nine years after the date of the gift, the rebel remaining always in possession, was thought simulate. They likewise fand, That a gift purchased by the rebel upon his expenses, and past by him the registers and seals upon his charges, was null, as taken to his behoof, albeit he had inserted the name of a donatar, who was his creditor. Farther, they fand, That the donatar, having accepted right from the rebel, of that which was contained in his gift, after the date thereof, acknowledged the rebel's right, and prejudged his own gift. Last, they fand, That John Inglis could not impugn Caprintoun's gift, because he had accepted a ratification from Caprintoun, as donatar, of a tack set by the Lord Ochiltrie to John Inglis.

*Haddington, MS. No 2638.*

1623. *March 20.* DALGARNO *against* E. MARISHAL.

No 258.

IN a declarator pursued by Dalgarno, as donatar to the escheat of the Earl Marishal, wherein L. Benholm, as another donatar, compeared, the LORDS found, That albeit the gift was taken to the behoof of the Lord Keith, eldest son to the rebel, yet that was not sufficient to stay the declarator, except it had been alleged that the Lord Keith had taken it to the use of the rebel's self; and therefore repelled that allegiance proponed by a contrary donatar, viz. L. Benholm. *See* No 156. p. 11591.

*Act. Nicolson & Mouat.*

*Alt. Hope & Stuart.*

*Clerk, Gibson.*

*Fol. Dic. v. 2. p. 158. Durie, p. 59.*

1623. *December 18.* LO. YESTER *against* JOHN MURRAY.

No 259.

SIMULATION sustained, upon these heads,—retention of possession, consent given to wadsets, and tacks made to the rebel, and acquiring from the rebel of wadsets; but found, That the gift, in so far as it was taken by the donatar as