

No 259.

from the rebel; but as for the lands acquired by him since his gift, which were under reversion to the rebel, or set in tack by the rebel, and consented to by him, and for all other the rebel's lands by and attour those which the excipient had acquired irredeemably, the LORDS would not sustain the excipient's gift, but preferred the pursuer the second donatar therein, albeit the excipient was cautioner for the rebel the time of the purchasing of his gift for his relief, whereof they found, that the excipient ought not to possess the liferent of the rest of the rebel's lands, in respect of the reply, which they admitted against the same, viz. the retention of the rebel's possession, and the excipient's consenting to the tacks and wadsets since that time set by the rebel, and his permitting of the rebel to apply the monies acquired therefor to the rebel's own use, which ought to have been employed either for the relief of the excipient or of some other the rebel's creditors; by the which the excipient had so prejudged himself, that he ought not to retain the liferent for his relief of these burdens whereof he might have relieved himself before, if he had not consented as said is, and so defrauded either the fisk or any other creditor, he colluding thereby with the rebel; and consequently admitted the reply to the pursuer's probation.

Act. Nicolson &amp; Stuart.

Alt. Hope &amp; Cunningham.

Clerk, Hay.

*Durie, p. 94.*

No 260.

1626. November 28.

EARL OF KINGHORN against WOOD.

SIMULATION inferred from the gift being procured at the rebel's expense.

*Fol. Dic. v. 2. p. 158. Durie.*\* \* \* This case is No 8. p. 5073. *voce* GIFT OF ESCHEAT.

No 261.

1637. March 28.

HAMILTON against TENANTS.

If a rebel at the horn be suffered by the donatar of his escheat to remain for several years in possession of his rents, this infers a sufficient nullity upon the act 1592 against the donatar at the instance of any of the rebel's creditors.

*Fol. Dic. v. 2. p. 157. Durie.*\* \* \* This case is No 65. p. 7835. *voce* JUS TERTII.