

No 8. and at the horn unrelaxed, the time of the taking of the said gift, granted to the pursuer, his relaxation since syne could not hinder the King effectually to dispo-
 ne the escheat to a second donatar, (if the first was taken to the rebel's own
 behalf), and which was sustained, albeit there was no creditor thereby hurt ;
 for the gift being taken to the rebel's use, continuing in his rebellion, was alike
 as if it had been gifted to himself, *quo casu* there was place to a second donatar
 to acquire a new gift at any time before the rebel's relaxation, as the gift given
 to the pursuer was, at the acquiring whereof he was not relaxed : Also this reply
 was found relevant, viz. that the said prior gift, granted to the excipient, was
 procured upon the travels and expenses of the rebel himself, which he offered to
 prove by the officers and members of Court, as use is in such cases, and which
 the LORDS sustained as sufficient *per se*, without any farther allegiance, that it
 was taken to the behoof of the rebel, to infer simulation. And the LORDS admit-
 ted the same in these terms, to the pursuer's probation. See PRESUMPTION.

Act. Hope & Rollock.

Alt. Stuart.

Clerk, Gibson.

Fol. Dic. v. I. p. 346. Durie, p. 237.

1627. February 2. SOMERVEL against STIRLING.

No 9.
 Found in con-
 formity with
 the above.

IN an action of special declarator, at the instance of Lewis Somervel, donatar
 to the simple escheat of L. Edmiston, wherein Mr William Stirling, donatar to
 his liferent escheat, compeared, the LORDS found, that albeit the goods and gear
 of the rebel, which he had pertaining to him at any time within the space of
 year and day after the denunciation, would fall under the simple escheat ; yet,
 if the same were not gifted, that is, if the gift bear only a disposition of the re-
 bel's goods pertaining to him the time of his rebellion, or if it bore a disposition
 of the goods pertaining to him the time of granting of the gift ; in those cases
 the gift would extend no further, and would not comprehend any other goods
 pertaining to the rebel, even which he had within the year, except the gift bear
 expressly, ' a disposition of all the rebel's goods which should pertain to him
 ' within the year ;' which clause not being insert in the same, the gift could
 not comprehend them ; and albeit the gift wanted that clause, yet the donatar
 to the liferent would not have right thereto, but there was place to the King
 and his officers *de novo* to dispo-
 ne the same again to a new donatar, by way of
 simple escheat ; and so the LORDS found, that this pursuer's gift, which was
 given in August, and bearing specially the disposition of the goods pertaining
 to the rebel the time of his rebellion, and of the said gift, which was granted
 within the year, could not extend to that whole year's farm, but only to the
 half thereof, viz. to the Whitsunday's term before the gift, and not to the Mar-
 tinmas term after the gift, seeing the gift was of the foresaid tenor ; but the

LORDS found, that the farms of the rebel's own labouring pertained to the donatar, by virtue of that same gift; and albeit the gift was given in August, yet that it extended to the whole farms of that crop which were in the rebel's hands in mansing, even as, if he had died in August, not being rebel, the same would have pertained to his executors. See TERMS LEGAL and CONVENTIONAL.

No 9.

Act. Hope.

Alt. ———.

Clerk, Gibson.

Fol. Dic. v. 1. p. 346. Durie, p. 267.

1642. February 10.

MOWAT against KEITH.

MR ROGER MOWAT, and one Keith of ———, son-in-law to Jean Guthrie, having either of them arrested the prices of some victual, addebted to the Laird of Ludquhairn, and contending for preference, Mr Roger craves to be preferred, because he was both creditor to Ludquhairn, and donatar to his escheat.—THE LORDS found, he could not crave preference as donatar, because he was donatar only to his simple escheat, under which they found that nothing could be comprehended but moveables, which then, at the time of the gift, and a year thereafter, only should pertain to the rebel; and the victual now controverted was of a crop five or six years subsequent after the gift, and so that it could not pertain to the donatar of the rebel's simple escheat; and they respected not the tenor of the gift, which disponed expressly all the rebel's goods, which he should acquire at any time thereafter during his rebellion, and that he was still rebel, which was not respected.

No 10.
Found, that a gift of single escheat could extend no farther than to the moveables belonging to the rebel at the time of the gift, and a year thereafter.

Act. present.

Alt. Gilmore.

Fol. Dic. v. 1. p. 347. Durie, p. 892.

1669. July 2.

BOW against CAMPBELL.

Bow, stabler in Edinburgh, as assignee to a sum of money due by Glenurchy, and also as donatar to the escheat of his cedent, being called in a double poinding, and competing; the donatar *alleged* he ought to be preferred to the arrester, because the debt in question falling in his cedent's escheat, he had taken the gift of the escheat, bearing expressly all goods the rebel had or should acquire, and this debt being acquired after the gift, did accresce to him, the rebel not being yet relaxed. It was *answered*, That though the stile of the gift bear all goods to be acquired, yet that is always interpreted such as happen to be acquired within year and day after the horning. It was *answered* for the donatar, That he opposes the tenor of his gift; and if any limitation could be there-

No 11.
Gifts of escheat, bearing all goods to be acquired, extend only to goods acquired within year and day of the gift.