

disposition of her liferent nor his rebellion could any longer prejudice her of her liferent, but the right thereof would return to herself; and, if her husband outlived her, the right of her liferent lands would expire with herself, and so neither her liferent, nor her husband's liferent, could fall to the Earl of Lothian her superior, by her husband's rebellion, she not being at the horn; but whatever fell by her husband's horning, behoved to pertain to the King and his donatar. It was *answered*, That nothing could fall to the King's donatar, because he could not pretend right to their liferent, because neither her husband nor herself held these lands of the King, as the superior thereof, neither could the King's donatar have right to this liferent by single escheat, because it fell not under single escheat. The matter being reasoned among the Lords, it was considered, that he who was year and day at the horn lost both escheat and liferent; and therefore it was no reason that he should bruike that which might fall either under escheat or liferent, and next, because the liferent controverted, was not holden of the King, his donatar could not have right to it as liferent, neither could he have right to it as single escheat, because it was not moveable, and therefore they found the exception not competent to the King's donatar. In respect whereof, sustained the pursuer's summons.

Fol. Dic. v. 1. p. 254. Haddington, MS. No 1579.

No 22.

1628. March 28.

FLETCHER against IRVINE.

IN a declarator of escheat pursued by Fletcher against Mr James Irvine, the Bishop of St Andrews compearing and *alleged*, that the said rebel's escheat pertained to him, and not to the King's donatar, seeing the said rebel dwelt in the lands of _____, which are within his regality. THE LORDS repelled this allegiance, for albeit the rebel (he being a minister) had his dwelling in his manse beside his parish kirk, the lands whereof, and whereupon his manse was builded, lay within the regality of St Andrews; yet they found that the said manse could not be reputed to be holden of the bishoprick, but that manses pertaining to ministers, being given to them by the King and Estates, by laws and acts of Parliament, the same ceased to be of any private holding, and could have acknowledgement of no superior but the King; and consequently the LORDS found, that the stipend due to the minister that year of his rebellion, albeit the same was paid out of the teinds of that lands holden of the Bishop, pertained to the King's donatar, because the debts owing to the rebel follow his dwelling-place as *nomina debitorum* do; likeas the sum owing to him for reparation of the manse, was also found to be in the like case. See MANSE.

No 23.
The single escheat of a minister falls to the King, and not to the Lord of regality, tho' the manse be within the regality.

Act. Hope.

Alt. Aiton.

Clerk, Hay.

Fol. Dic. v. 1. p. 254. Durie, p. 373.