

No 2. sued John Erskine of ———, who obtained the gift of Carden's escheat upon the said horning, to pay to him the said sums contained in the horning, whereupon he took the escheat conform to the act of Parliament. The summons was found relevant, notwithstanding divers allegances. Thereafter, John Erskine *alleges* that he could not be decerned to pay the said sums, because he had never intromitted with any of the rebel's goods, neither had he obtained any declarator upon the escheat, but was stayed in the declarator by a son of the Master of Elphingston's, and so unless he would cause his son renounce he could not be decerned to pay the sums, seeing it might be he prevailed not in the declarator. The action was interrupted by the decease of the laird of Carden.

*Fol. Dic. v. I. p. 253. Haddington, MS. No 632.*

1603. February 9.

STALKER *against* MURRAY.

No 3.  
Found as  
above.

STALKER having denounced his debtor called Shaw, to the horn, whose escheat was taken by George Murray, Stalker pursued George Murray to make payment of his debt contained in the said horning, whereupon he had taken the said gift of escheat, conform to the act of Parliament 1592, Cap. 145.—It was *excepted* by the donatar, That the summons was not relevant, because he had neither intromitted with the rebel's goods, nor obtained declarator of the escheat; and so, unless the pursuer would either allege, that he had intromitted or obtained declarator, he should have no process, in respect of the 145th act of the said 12th Parliament, seeing a donatar could be in no worse case than the treasurer; and the treasurer would never be holden to pay the rebel's debt, except he intromitted with the goods, and therefore the donatar behoved to have the like benefit.—Notwithstanding whereof, the LORDS repelled the allegance, and found process, unless the donatar would either pay the debt contained in the horning whereupon he took his gift, or else would renounce the said gift.

*Fol. Dic. v. I. p. 253. Haddington, MS. No 676.*

1631. March 15.

FLETCHER *against* KID.

No 4.  
A donatar of  
escheat is not  
allowed to re-  
nounce after  
intromission.  
Neither can  
he defend  
himself a-  
gainst pay-  
ment, by  
pleading the

JANET KID in Dundee being denounced rebel at Fletcher's instance, who was tacksman of the customs, upon general letters raised by the customers, and she being, by virtue thereof, charged to pay a particular sum, contained in the execution against her, and denounced for not payment thereof, the charge being on twelve hours; whereupon one taking her escheat, the said Fletcher pursues the donatar to pay the debt of the horning, whereupon he had taken her escheat; and the donatar alleging the horning to be null, because she was de-

nounced upon general letters, against the act of Parliament, there being no probation nor trial, that she was addebted in that quantity contained in the charge; and, as the party herself could not be compelled to pay the sum libelled, until the time that it had been tried, and she found debtor therein, even so the donatar is far less subject; likeas he renounced that gift of escheat. And it being *replied*, That the donatar by virtue thereof intromitted, so that he could neither renounce, seeing *res* was not *integra*, neither oppone any nullity against that horning, whereupon he had taken the escheat, and intromitted,— THE LORDS repelled the allegiance, and sustained the horning, in respect of the donatar's intromission, whereby they found, that he could neither quarrel the horning, nor renounce the gift; neither was it respected, that the defender alleged, that, whatever intromission he had, the horning being vitious, as said is, and the debt never constitute, that he would be, in law, forced to pay the same back again to the parties having right to the said Janet Kid's goods, which was repelled.

*Item*, THE LORDS found, That the donatar was not liable for the annualrent of the money contained in the horning, since the time of the denunciation, as the pursuer craved, conform to the act of Parliament, which he alleged was alike against the donatar as against the rebel's self, which was not sustained, but absolvitor granted therefrom; for it was found the act of Parliament could not be extended.

Act. Burnet.

Alt. Russel.

Clerk, Hay.

Fol. Dic. v. I. p. 253. Durie, p. 581.

1663. February 10.

WILLIAM MONTGOMERY *against* THEODORE MONTGOMERY, and Mr WILLIAM LAUDER.

WILLIAM MONTGOMERY, as donatar to the liferent escheat of Theodore Montgomery, pursues a special declarator against the tenants of Whiteslide, belonging to Margaret Hunter in liferent, and now to Theodore, *jure mariti*, for their duties. It was *alleged*, That the horning was null, because the debt was satisfied before denunciation. The pursuer *answered*, That it was not competent, in the special declarator, to question the nullity of the horning. *2dly*, Though it were in a general declarator, it were not competent, not being instantly verified without reduction. *3dly*, It were not probable, but by writ, before the denunciation, and not by the creditor's oath, or having discharges, being in prejudice of the King; but that no hazard might be of antedating it, was required by act of Parliament, that beside the writ, the parties should depone upon the truth of the date. The defender *answered* to the *first*; All defences competent in the general declarator, are reserved in the special. To the *second*, There is a reduction depending.

No 4.

nullity of the horning. A donatar is not liable for annualrents that became due after denunciation.

No 5.

In a declarator of escheat, the horning was alleged to be null, as being upon a null decreet. This was repelled, because the party was in contempt in not suspending *debito tempore*.