

and the donatar acquired possession before the sasine, which was found relevant to exclude the pursuer's right; seeing the charter made to her, albeit before the rebellion, and albeit inhibition was execute against her author, although before his rebellion, yet the same remained in the naked terms of a personal obligation, so long as sasine was not taken thereupon, and gave not the pursuer any real right to the land before the sasine, betwixt the which, and the charter, her author's rebellion intervening, who was not effectually denuded, by the naked charter, but who remained in the real right of the land, gave right thereof to the King for his lifetime, and she had only personal action against himself and his heirs; for, in this case, the King's donatar was in as good estate as any other person, who had acquired a real right of the land after the pursuer's charter, and before her sasine, and who would have been preferred to the pursuer; and the inhibition preceding could not derogate from the King's right acquired by the rebellion.

No 58.

Act. *Cunningham.*Alt. *Belshe.*Clerk. *Gibson.**Fol. Dic. v. 1. p. 256. Durie, p. 85.*

1630. June 19.

NISBET *against* LADY ABERCORN.

No 59.

A CREDITOR of a vassal having arrested after year and day, and obtained decret of furthcoming before gift or declarator of the liferent escheat, was preferred to the superior's donatar because of his diligence.

*Fol. Dic. v. 1. p. 256. Durie.**** See This case, Section 5. *b. t.* No 38. p. 3643.

1631. February 16.

LO. CRANSTON *against* SCOT.

LO. CRANSTON, superior of the lands of Salwoodsheil, pursuing declarator of liferent against Sir John Scot, as son and apparent heir to his father, who was the pursuer's vassal, wherein Andrew Scot compearing, who had comprised these lands, being a creditor to Sir John, *alleged*, That he being creditor to him before he was rebel, and having denounced the lands to be comprised, albeit after he was rebel, yet before he was rebel year and day, and thereafter having completed the comprising, and charged the superior to enter him, that ought to stay the declarator. THE LORDS repelled this allegiance, and found that his comprising, deduced and perfected after the debtor was rebel year and day, and a charge following thereupon, could not prejudge the superior of the casualty of the liferent of the apparent heir of the vassal; in which casualties, the LORDS found, that the superior was not hurt by the foresaid denunciation.

No 60.

Found in conformity with
No 57. p.
3660.

No 60.

which preceded the expiring of year and day ; the debtor the time of the said denunciation, being standing rebel unrelaxed, and so *in cursu*, but being expired before the comprising was expedite ; for it was found, the superior ought not to want the casualty of his vassal's liferent, except that either he had done some deed himself in prejudice thereof, or that some deed had been done equivalent thereto, as comprising, and charge to enter and receive the comprising, and all done and execute before the expiring of the year.

Act. *Nicolson & Craig.*Alt. *Gilmor.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 256. Durie, p. 569.*

* * * Spottiswood reports the same case :

SIR JOHN SCOTT of Newburgh being denounced rebel ; before he was year and day at the horn, his lands were denounced to be comprised at the instance of Andrew Scott chirurgion in Edinburgh, but year and day was expired before the lands were comprised. The Lord Cranston, superior to the said Sir John, craved a declarator of his liferent escheat of the same lands comprised. *Alleged* for Andrew Scott, That he had comprised these lands, and by virtue thereof, was in possession. *Replied*, His comprising could not prejudice the superior of his casualty through the remaining of his vassal rebel more than year and day, especially seeing his comprising was after year and day, at which time, *jus erat acquisitum superiori.* *Duplied*, Albeit his comprising was after the expiring of year and day, yet the denunciation was within year and day, which made that the defender being a creditor, could not be prejudged through the rebel's remaining at the horn unrelaxed attour year and day. THE LORDS found that the superior could not be prejudged of his right by any deed not done by himself ; neither that the denunciation (being but an imperfect deed ay and while comprising followed thereon) could sist the course of the rebellion, and frustrate the superior of his casualty, unless the comprising had been perfected before the year and day expired.

Spottiswood, (ESCHEAT and LIFERENT.) p. 105.

* * * The like was decided in the case, Rule against Renton, 24th July 1632, Section 2. *b. t.* No 13. p. 3624.

1633. *March 19.*L. RENTON *against* BLAIKADER.

No 61.

The donatar to a rebel's liferent escheat, is preferable to a base infeftment granted prior to denunciation,

ONE being donatar to the liferent of the L. of Wedderburn, in the lands of _____, holden of John Stuart, and pursuing special declarator thereon ; the L. Blaikader, who was one of the defenders called, *alleging*, That he was infeft in these lands by the L. of Wedderburn, before he was rebel, for most onerous causes, so that he had right to the mails and duties thereof, and not the dona-