

1632. *March 24.* L. LOCHINVAR *against* LINDSAY of Wauchope.

**No 42.**

A person, after he was rebel, but before year and day, having disposed his lands for an onerous cause, and the purchaser being intett, he possessed 12 years unchallenged. Notwithstanding of which, the superior was found to have right to the profits of the lands during his vassal's life.

IN a declarator of Wauchope's liferent of the lands of Dryburgh, holden of Lochinvar, the defender *alleged*, That the summons should abide continuation, seeing it must abide probation; for he shows not where the defender holds the lands of him, which in declarators at the instance of the King's donatar is presumed, that all the subjects hold of his Majesty, except another superior be instructed; but the like presumption stands not for any subject. This allegiance was repelled, and no necessity found of continuation, where the pursuer shows his own infeftment of the lands libelled, and that the defender was rebel year and day.

*March 28.*—IN this case, mentioned before, 24th March 1632, the LORDS found, That although the vassal had disposed the lands, for a cause onerous to another, who was heritably infeft therein, to be holden of the vassal's self, and that before the vassal was rebel year and day; but he being then rebel, and the rebellion *in cursu*, and the rebel being unrelaxed the time of the disposition; and albeit there were ten years and more bypast since the expiring of year and day, during the which whole space the acquirer of the lands from the vassal had been, as he yet is, in continual peaceable possession of the lands, uninterrupted by the superior, or any other by virtue of the alleged casualty of the rebellion; and whereby he alleged, that the continuing of the rebellion, which hath lain so long over and obscure, cannot now be obtruded against this singular successor, to prejudge his right acquired for onerous causes, and clothed with so long real possession, of the which rebellion he had so probable cause to be ignorant; yet the LORDS repelled this allegiance, and found the superior, notwithstanding of the right made by his vassal, as said is, being then rebel, and the rebellion running, (he unrelaxed) had right to the liferent of his vassal, and that the profits of the lands pertained to him during the lifetime of his vassal.

Act. ——— *Œ Gordon.* Alt. ———. Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 554. Durie, p. 632. & 633.*

1638. *December 6.* COCHRAN *against* DAWLING.

**No 43.**

Found in conformity with Lindsay against Porteous, No 36. P. 8354.

ROBERT DAWLING, by contract betwixt him and Violet Dawling his sister, is obliged to pay to her yearly L. 200 during her lifetime, for the annualrent of L. 2000 which she gave to him; which being yearly paid while he lived; after his decease his two daughters, his heirs, by decret of the Lords, were decerned to pay the same; and according thereto, being paid by their curators, thereafter one of the daughters being married upon one Abercromby of Pitelpie, he and his wife give to the said Violet for her security an infeftment of L. 100