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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.

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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-

tar, by virtue of any subsequent rebellion after his right, the LORDS repelled this allegiance, and found, that the donatar had right thereto, in respect the infeftment excepted upon, was confessed to be a base infeftment, and not clothed with possession, and therefore could not be valid to seclude the donatar, no more than the base infeftment foresaid would have excluded a posterior public right, acquired after the base, being clothed with possession: But this instance of the public right, clad with possession, meets not this case, where none of the parties are in possession, but are presently claiming the same; and if, in the instance adduced, the prior base right, and the posterior public, were contending for the possession, the same scruple would remain.

Act. *Stuart.*Alt. *Nicolson & Belsbes.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 256. Durie, p. 680.*

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unless either confirmed or clothed with possession before the annual rebellion existed.

1634. *December 3.*

LINDSAY against SCOT.

MR JAMES LINDSAY, servitor to the Bishop of Glasgow, having obtained the gift of liferent of Scot of Well, and general declarator thereupon, pursues special declarator against one Scot, for the mails and duties of the lands of —, whereof the defenders alleging, that they had a contract of alienation of the said lands, under reversion, made to them by the rebel's father, and by virtue thereof they had been 38 years in possession; and the donatar *answering*, that it was not a good right, which could militate against the donatar, not being real, nor any infeftment taken thereon, no more than it would meet a singular successor. THE LORDS repelled the allegiance, and found, that the contract of wadset granted by the rebel's father, could not defend now after the decease of the father, his son being rebel, who was his apparent heir; seeing the defender had no real right, without which it would not meet the singular successor, nor the donatar, who now was as favourable as a singular successor, and more favourable than any other, in respect he had the superior's right, in whose person there was an heritable right of the land, which carried with it the effect of the property, so long as there was not a legal vassal, and this cannot exclude the superior's self, and no more his donatar.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 256. Durie, p. 738.*

No 62.  
Found in conformity with No 57. p. 3659.

1642. *February 8.*

WEDDEL against E. FINLATER.

ONE Weddel having comprised James Ogilvy's lands, and being infeft therein by the Earl of Finlater's precept, who was superior; wherein it was provided, that that entry should be without prejudice of the Earl's right to the land, by

No 63.  
Found in conformity with No 50. p. 3659.