

No 51.

the first bond, so that the disposition alone was sufficient to prove the debt; especially seeing, when they acquired the said disposition, and payment thereby, the disponent was then relaxed from the horn and was a free person;—THE LORDS repelled the allegiance, and found the disposition, albeit proverting a confession of the debt, was not enough to prove the debt preceding the horning; for, after horning, any rebel might, by such deeds, defraud the King and his donatars, to confess debts which truly they were not owing, and so frustrate the King altogether, if this were sustained; and, albeit the rebel was then relaxed, yet that did not purge his preceding rebellion which made all his goods to fall which he had before the rebellion, and at the time thereof before he was relaxed.

Act. ———.

Alt *Heriot*.*Durie, p. 753. & 755.*

* * * This case is also reported by Spottiswood :

1635. *Feb. 13.*—KATHARINE MOSSMAN, donatar to the escheat of umquhile James Nisbet her husband, having obtained general declarator thereupon, convened Allan Lockhart for delivery of certain goods belonging to her husband. *Alleged*, The same were disposed to him by the rebel for payment of a true debt owing by him to the defender, whereof he was in possession long before the gift. *Replied*, Not relevant, except it were alleged disposed before the rebellion, for after he was rebel he could do no deed in prejudice of the King or his donatar. THE LORDS found the exception relevant. After this the defender being urged to condescend how he was creditor to the rebel, produced an assignation made to him by the rebel of the goods libelled, which assignation bore to be granted for sums of money. THE LORDS would not find him a creditor, because the assignation bore it, being only the concession of the rebel, but would have him qualify it some other way.

Spottiswood, (ESCHEAT and LIFERENT.) p. 107.

1636. *July 30.*

JAMES JOHNSTON of Corehead *against* JAMES JOHNSTON of Neis.

No 52.

A DEBT being owing to the rebel, and assigned by him to one of his creditors *stante rebellione*; if the assignee hath not got possession of what is assigned to him, before the gift of his cedent's escheat, the donatar will exclude him from it, although it be for never so onerous a cause.

Fel. Dic. v. 1. p. 556. Spottiswood, (ESCHEAT and LIFERENT.) p. 107.