

No. 3.

\* \* Durie reports this case :

In a declarator of one Lawson, it was found, that a donatar to a rebel's escheat may, by special declarator, after the rebel's decease, seek the goods which were given in steilbow by the rebel to a tenant of his lands, and conditioned by the tenant to be rendered again at the ish and end of his said tack, to be declared to pertain to the said donatar ; which pursuit was sustained, albeit it was intended divers years before the ish of the tack, before which ish the tenant could not be pursued for delivery of the said goods ; seeing this action was only *declaratoria juris* ; and also found, that the said goods come under the compass of the rebel's escheat, and did thereby pertain to the donatar thereof, and pertained not to the heirs and executors of the rebel, albeit he was deceased before the ish of the tack.

Act. Stuart.

Clerk, Hay.

*Durie, p. 471.*

No. 4.

Where the tenant had no tack, he was ordained to deliver the steilbow to the donatar betwixt and Whitsunday, although he had received no warning to remove.

1637. July 18. VISCOUNT OF BELHAVEN *against* LADY LUSS.

The Viscount of Belhaven being donatar to the Laird of Luss' escheat, and obtaining declarator thereupon, pursues a special declarator against the Lady Luss, and certain others, wherein a tenant being called for delivery of certain steilbow goods, which were delivered to him by the Laird of Luss, the time when the room was set to him in steilbow, with the said goods ; and the defender alleging, that he could not be subject to deliver the same to the donatar, he being tenant of the room, so set in steilbow ; for he could not deliver the goods, and be compelled to keep the room, and to pay the yearly duty therefore, wanting the steilbow, which he obliged him to pay for the same, together with the steilbow ; the Lords found, that the defender ought to be compelled, by this process, to deliver the steilbow goods to the donatar, betwixt and the term of Whitsunday next to come, 1638, betwixt and which term he might provide himself of another room, and give over this room to the setter thereof to him, or to any other having right to the same, and that in the mean time he might make use of his corns, and provide for the delivery of the steilbow goods : And it was not respected, that the defender alleged, that he being tenant, closed within terms, as the heritor could not remove him before he were lawfully warned, as use is, no more could he pursue for the delivery of the steilbow goods, before he were warned, seeing he could not deliver the goods, which were the means by the which he laboured, and which are *pars fundi*, so conditioned to him, and consequently the donatar, who could not be in a better case than the master, who set the room, could not pursue for the goods, except he had been first warned to remove ; which allegiance was repelled, for the Lords found, that the defender ought to deliver the steilbow goods to the donatar, as having right thereto, at the next Whitsunday, after the separation of

the crop, and that it was in the tenant's will still to retain the possession of the room, or to leave the same, if he liked, after that ensuing Whitsunday, and ay and while he were warned by one having right to the land, which a naked donatar to the simple escheat could not do, albeit that donatar would also have had right to the stailbow goods : And this was found, in respect that the defender was but a naked tenant without tack, whereas, if he had obtained tack of this room in writ, with the stailbow, the donatar *eo casu* could not have pursued for delivery of the goods, while the tack was expired, albeit he might have sought *declaratoriam juris* thereupon, before the expiring of the tack.

No. 4.

Actor, *Advocatus et Nicolson.*

Alter, *Mouat,*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 393. Durie, p. 853.*

1638. December 4. LADY WESTMUIRLAND against LADY HOME.

Lady Westmuirland, as executrix decerned to the umquhile Lady Hume, her daughter, who was the spouse of umquhile James Earl of Hume, and who was his relict, surviving him, pursues the Lady Hume, mother to the said umquhile Earl James, for payment of the prices of certain goods, such as kine, oxen, and sheep, which were upon the lands of Old-Cambus, and pertained to the said umquhile James Earl of Hume, as his proper goods, and consequently the just equal half whereof should pertain to his relict, by the laws of this kingdom; and which, being sold and disposed by this Lady, defender, the Earl's mother, she ought to pay the half of the price thereof to the pursuer, as having the relict's right; and the defender alleging, That the lands of Old-Cambus, with the stailbow goods thereon, being disposed by John Arnot to umquhile Alexander Earl of Home, husband to the defender, and father to Earl James, and to this same defender, and longest liver of them two, and to his heirs, these goods now pursued for must be reputed the same, and none other, which were disposed in stailbow, as said is; except the pursuer will libel, and offer to prove, that Earl James had the goods libelled upon the said lands by and beside the other foresaid stailbow goods disposed to Earl Alexander and this defender; and if the pursuer will not allege the same, (as indeed it cannot be alleged), then she has no right to claim any part of these stailbow goods; because the same, pertaining to Earl Alexander, and the defender for her lifetime, as said is, the same must pertain, after her decease, to Earl Alexander's executors, likeas they are confirmed in his testament; conform whereto she must be countable therefore to the executors confirmed to the said umquhile Earl Alexander; and the heir of the said umquhile Earl Alexander could never have right to the said stailbow goods, and, by consequence, neither the pursuer's daughter, his relict; specially also, seeing this Lady, defender, has the life-rent use of these goods, against whom, during her lifetime, neither the

No. 5.  
Stailbow belongs to the executor, not to the heir.