

No 44.  
subsequent  
account the  
debt had been  
diminished.

THE LORDS repelled the defence, and found, That the rebel being liable only personally for the price of the goods alleged disposed, and the property of the goods in question being his, the same belonged to the King; and the King and his donatar were not obliged to debate upon what account and occasion the rebel was debtor to the defender, or what use he made of the goods disposed to him by the excipient; and is in no worse case than a creditor poiding or arresting, or any other person acquiring right to the property of goods, who would be preferred notwithstanding such pretences, there being no such hypothec that can be pretended by the law of Scotland. Diverse instances were adduced by me to this purpose, not only in behalf of the King, but of other superiors and heritor, as *v. g.* if a superior should pursue declarator of a liferent, and it should be alleged that after the rebellion the rebel had disposed a part of his lands, and that it should be offered to be proved that the money for which the disposition was given, was lent for acquiring the right of the lands, so that thereby the superior had benefit thereby; or, if the master were pursuing by virtue of the legal and tacit hypothec competent to him, and it should be alleged that the tenant was debtor to another for the price of corns furnished for sowing the ground; in which cases the superior and master could not be frustrated upon any such pretences. See RECOMPENCE.

Act. Birnie.

Alt. Thoirs & Fraser.

Clerk, Hamilton.

Fol. Dic. v. I. p. 555. Dirleton, No 75. p. 30.

1669. February 24. COUNTESS OF DUNDEE against STRAITON.

No 45.  
Escheat not  
burdened  
with debts  
contracted  
after rebel-  
lion.

THE Countess of Dundee, as donatrix to her husband's escheat, pursues Straiton for a sum due to her husband.—The defender *alleged* absolvitor, because that same day this bond was granted by him to the Earl, a creditor of the Earl's arrested, to whom the defender had made payment, and obtained his assignation; and therefore, as assignee craves compensation, and preference as arrester.—It was *answered*, That this debt being contracted by the late Earl, after he was rebel, it cannot burden his escheat in prejudice of the King and his donatar; for though creditors, whose debts were due before rebellion, arresting after rebellion, may be preferred, yet no debt, contracted by the rebel after rebellion, can burden his escheat, neither by arrestment nor compensation;

Which the LORDS found relevant, and preferred the donatrix, except as to what was due to the defender by herself, or for drugs to her husband, which she was content to allow.

Fol. Dic. v. I. p. 554. Stair, v. I. p. 612.