

1670. December 17. NICOL LANGTOUN against Robert Scot.

No 263.

Simulation of a gift of life-rent inferred from the rebel's obtaining the gift blank in the donatar's name.

JOHN GRAHAM of Gillesby having set a tack of his lands of Graystoneflat to Nicol Langtoun, and being at that time at the horn, Robert Scot obtains a gift of his escheat and life-rent from Annandale his superior, and thereupon obtains general and special declarator, decerning Langtoun to pay the duties to him as donatar. Langtoun suspends, and raises reduction on this reason, that the gift was simulate to the behoof of Graham the rebel, procured by his own means and moyen: And it being answered by Scot, That he being a lawful creditor of the rebel's, might lawfully accept and make use of this gift for his own security, albeit the rebel had procured the same; and Scot the donatar having deponed anent the simulation of the gift, and that he had it blank in the donatar's name, and that he did fill up Scot's name, and delivered it to him;

THE LORDS found the oath to prove the simulation of the gift; and that it having been in the rebel's own hands blank in the donatar's name, it was equivalent to an assignation from the rebel; and that Scot accepting of it so from him, could not justly or *bona fide* make use of it, even for security of a just debt in prejudice of the tacksman, who had before gotten his tack from the rebel.

*Fol. Dic. v. 2. p. 158. Stair, v. 1. p. 703.*

1673. December 12. DICKSON against M'CULLOCH.

No 264.

Presumption of simulation from the rebel's continuing in possession, taken off by contrary presumption.

MR GEORGE DICKSON pursues a declarator of the escheat of William Gordon, wherein comparance is made for Sir Alexander M'Culloch and John Blair, in whose name he had obtained a gift of the said William his escheat under the King's hand, who alleged, That the pursuer's gift is null, as being simulate, and to the behoof of the rebel, upon these evidences, That it is taken by Mr George Dickson, who is ordinary agent to William Gordon; and that it was four years past in Exchequer before it was taken out, during all which time the rebel was suffered to retain possession; that the rebel hath concurred and colluded to prefer this pursuer's diligence, having returned the process, and the same day of the return without inrolment, consented to the calling and decerning of declarator. It was answered, That the grounds of simulation are not relevant; for the retention of possession is only after the gift was expedite, and the reason why it was not craved out here was, because William Gordon had no moveable right, but the expectation of a spuilzie against Sir Alexander, which was dubious, and but lately determined; that William Gordon's course doth not import simulation, because Mr George Dickson hath granted back-bond to the Exchequer in favour of William's creditors, and Sir Alexander's gift is without back-bond; so that the pretence of simulation is taken off

by the back-bond in favour of the creditors, Mr George having no benefit by it but his own satisfaction; and all being but light presumptions, *presumptio sedit veritati*, Mr George is content to depone that the gift is not to the rebel's behoof, but for satisfaction of debts to himself and several others of William's creditors, at whose desire he took the same.

No 265.

THE LORDS found the back-bond to the Exchequer, and the oath of the donatar, sufficient to elide the presumption of simulation.

*Fol. Dic. v. 2 p. 155. Stair, v. 2. p. 239.*

1676. December 20.

VEITCH against PALLAT.

No 266.

THE LORDS found, that a rebel contracting debt after rebellion cannot assign in satisfaction of the same any debt due to him; and though the assignee should transact with the debtor of the debt assigned, before a gift and declarator, the donatar will be preferable. *In presentia*.

For Veitch, Lockhart and Hog.

Att. Cuninghame and Seaton.

Clerk, Gibton.

AND in the same case it was found, that a bond granted after horning, though it did bear that the same was for wines, yet being the rebel's assertion, could not prejudice the King. But it being *alleged*, and offered to be proved, that the said wines were truly furnished before the rebellion, the LORDS found the allegiance relevant to be proved only by the rebel's account-books and by books of entry, and not simply by witnesses, without such adminicles in writ.

THE LORDS likewise found, that the presumption introduced by the act of Parliament, that gifts of escheat are simulate, in respect that the rebel is suffered to possess, is only in that case where the rebel has a visible and considerable estate of lands or tacks, and is in possession of the same: But when the rebel's estate is either not considerable, consisting only of an acre or two, (which was the case in question) or *in nominibus*, and not known to the donatar, so that the donatar had reason not to trouble himself, and to look after either that which was inconsiderable, or which was not known to him, there is no ground to presume that the gift is simulate.

*Fol. Dic. v. 2. p. 157. Dirleton, Nos 409, 410, & 411. p. 201.*

\* \* \* Stair's report of this case is No 91. p. 2874. *voce* COMPETITION.

1707. June 10. SHEIRERS against MURRAY and DALGLEISH.

No 267.

MARY and Sophia Sheirers being infest upon a disposition from Andrew Sheirer, their brother, in some houses lying in Hackerston's wynd, pursue the

In a reduction of a gift of life-ent-escheat, it was found no sic