

1701. July 9. JAMES GORDON of DAACH *against* The TENANTS of WESTERTON.

JAMES Gordon of Daach, as donatar to the liferent-escheat of John Anderson of Westerton, constituted by Duff of Braco, superior thereof, pursues a general and special declarator against the tenants; in which process Major Alexander Anderson, brother to Westerton, the rebel, craves to be preferred, as donatar constituted to his brother's liferent-escheat by the King's Exchequer: and, for instructing that the lands held of the King, he produced a seasine following on a resignation made by Arthur Forbes of Balveny, then superior, in Westerton's favour, to be holden of the King, and whereupon Westerton was infeft as the King's vassal in 1687.

OBJECTED,—That the Major could never compete on the said gift nor infeftment; not on the gift, for he had not so much as raised a declarator; not on the infeftment, for it was *a non habente potestatem*, Arthur Forbes being long before that denuded by adjudications, whereunto Braco had right; so he was no more superior.

ANSWERED,—The Major was seven years and more in possession, by virtue of a gift, and likewise of an infeftment holden of the King, of whom all lands were presumed to hold, unless their holding of a subject were instructed; and he was not obliged *hoc loco* to debate the validity of his right, but had the benefit of a possessory judgment till Braco's donatar raised a reduction, calling the King's officers of state and his author Arthur Forbes's heirs, and then he would debate his rights.

The Lords thought superiors might be thus prejudged, if parties, on lame pretences, should apply to the Exchequer, and take forth gifts of liferent-escheats, as if they were the King's vassals, and then tell the true superiors, You must call the officers of state, and reduce: and therefore found the Major bound to debate the validity of his right in this same process. And, in regard Braco's anterior right was instructed, they allowed the Major to reply, that either his adjudications were extinct by payment or intromission, or that the legal was yet current, and they still redeemable; and appointed the Ordinary to take them in summarily in this same process.

*Vol. II. Page 118.*

---

1701. July 9. The CITIZENS of GLASGOW *against* The MAGISTRATES and COUNCIL.

GEORGE Lockhart, and other citizens of Glasgow, having given in a complaint to the last session of Parliament, bearing that the King's charter to the burgh of Glasgow, and the printed Act of Parliament 1690 anent electing their magistrates, have not been observed; and that John Anderson of Dovehill, provost, and the Town-Council, his dependers and adherents, had unwarrantably overstented the burgesses in £32,000; and had continued themselves in the magistracy more than a year, contrary to the old acts in King James III.'s reign; and that sundry of the trades had no vote in the election, whereas they had two halls, the one of merchants, the other of trades, who should have a share in