ther say he paid it, nor got it fairly delivered up to him (though gratuitously,) his oath will never exoner him. *Vol. II. Page* 700.

1712. *January* 10. JOHN WHYTE *against* DANIEL REID and the TENANTS of BIRKHILL.

JOHN Whyte, Bailie of Kirkaldy, having right, from Sir David Arnot of that ilk, to an adjudication on the lands of Birkhill, pursues the tenants for maills and duties. Daniel Reid compears, as having right to the said Sir David's single and liferent escheat, the gift and declarator therein being prior to the said adjudication; and craved to be preferred.

ALLEGED,—Daniel's right from Sir William Bruce conveys only the single escheat, in so far as the clause runs thus,—" assigning him to the gift of escheat, and the sums of money falling under the same;" which is the style for single escheats, only sums being the proper subject of such; whereas if the transmission of the liferent escheat had been designed, it would have named it, or at least have assigned to the rents of his lands: all gifts being *stricti juris*, and not to be extended to things of a different heterogeneous nature.

ANSWERED,—The distinction is empty and frivolous; for he is assigned indefinitely to the gift of Sir David Arnot's escheat in the general, without any restriction; and the gift produced contains both the single and liferent. And if Sir William had designed to retain the liferent escheat, he would have expressly reserved it.

2do, OBJECTED,—The gift and denunciation is null; for the execution wants that essential solemnity of leaving and affixing a copy at the market-cross; and which is as material and necessary to the certioration of the lieges, as either the blasts or three oyesses; and yet the want of these has oft been found to annul the horning. And the not leaving a copy is a plain nullity in an inhibition, and so sustained; and there is the same parity of reason for it in a horning. And not only our consuetudinary law, but even our statutory requires this; as appears from Act 33d 1555, and Act 86th 1587; to which we may add Stair's authority, *lib.* 4, *tit.* 38 and 47.

ANSWERED,—Many of these ancient forms are now gone into desuetude; and on a late occasion, betwixt my *Lord and Lady Semple*, this individual nullity being obtruded to a horning, the Lords caused inspect the registers; and, on report, found, that, generally, the executions, these twenty years bygone, wanted that clause; so that the Lords repelled it in that case, in regard the sustaining it might make a great convulsion in the securities of the people.

REPLIED,—The ignorance, error, and mistakes of writers, notaries, and messengers, in omitting to insert necessary clauses, can never abrogate clear laws, which cannot be enervated by their ignorance or knavery, whereas cautious and skilful messengers use the old style to this day.

3tio, ALLEGED,—The gift is yet null by the 145th and 147th acts 1592, declaring it shall be a relevant exception against a gift, that the rebel continues in possession of his lands and goods; but so it is, that Sir D. Arnot possessed thir lands many years after the gift and declarator.

ANSWERED,—The Lords cannot forget the constant uninterrupted law-war waged betwixt Sir D. Arnot and Sir William Bruce, all his lifetime, which will soon convince them there was neither collusion nor simulation on Sir William's part. But, *2do*, This is utterly *jus tertii* to Bailie Whyte, and only competent to one who has taken out a second gift; which you have not.

4to, OBJECTED,—Gifts of escheat do not extend *ad acquirenda*, but only to the goods, lands, and possessions they had at the time of the denunciation to the horn, and were purchased and acquired within the year of rebellion; but, *ita est*, this adjudication is long after.

ANSWERED,—The principal laid down is not so sure; for, in inhibitions, it is *indubitati juris* that they reach *etiam acquirenda*. But the truth is, this adjudication was no new purchase, for the original debt for which it is led was long prior. And how can a right coming in the rebel's own person, (as this adjudication did,) pretend to compete with the donatar to his escheat? Yet see Hope's Major Practics, *25th and 28th June* 1622, *Laird of Caprinton;* and *23d January* 1684, *Wilson and Kennedy*, observed by President Newton.

5to, OBJECTED,—That Sir William adjudged for this very debt, and entered in possession of the lands of Arnot; and is now overpaid.

ANSWERED,—Sir William's intromission was by virtue of other rights upon Arnot's estate above the value: and so his possession can never be ascribed to extinguish this right.

The Lords repelled the objection in respect of the answers; and preferred the donatar to the rents of the lands in question. *Vol. II. Page* 701.

1707, 1710, 1711, 1712. The EARL of WINTON *against* HAY of DRUMMELZIER and his LADY, and JAMES SEATON, Brother to Viscount Kingston.

1707. *November* 11.—GEORGE, Earl of Winton, after seven or eight years' absence out of the country, being now returned, gives in a bill to the Lords, complaining of Mr James Seaton, brother to the Viscount of Kingston, that, on the death of Mr Christopher Seaton, the Earl's brother, in 1703, the said Mr James had officiously intruded himself, without any legal warrant, into the possession of his house of Seaton, and intromitted with his whole rents, besides his casual estate of coal and salt; and usurped the management of his girnels; so that now, on his return, he keeps up the keys of his closets and granaries: And though he, as master and proprietor, might open them summarily at his own hand, yet he resolves not to make a forcible entry, lest it might be pretended there were papers there left which truly are carried away, as his horses and furniture are: And therefore craves the Lords would name Mr John Stodhart to open the cabinets and granaries, and inventory the papers, and measure the wheat and salt; and that Mr James Seaton, and John Gordon, his servant, may be warned to be present thereat, that the same may be an exoneration to the said Mr James of his intromissions *pro tanto*, and that my lord may have access to his own estate.

The Lords thought the desire of the bill so reasonable, that, without ordaining it to be seen and answered, they granted the desire thereof, in so far as con-