

No 10.

The same found betwixt James Rule and James Renton, the question being about the Laird of Billie's escheat, who was a vassal also of Coldingham, 26th July 1632. See No 13. p. 3624.

Spottiswood, (ESCHEAT) p. 102.

* * The same case is also reported by Auchinleck, *voce* DISCLAMATION, No 3. p. 3556.

1630. *March 23.*

MURRAY *against* DONATAR of COMMISSARY of DUNKELL'S Escheat.

No 11.

A proprietor of lands continued in possession thereof for several years after his liferent escheat had fallen. It was found that the superior had only right to as much of the farms of the several years past since the rebel was year and day at the horn, as the land used to pay of rent, and that the rest of the crop pertained to the donatar of the single escheat, deducting expenses of labouring, &c.

MR Patrick Murray donatar to the Commissary of Dunkell his single escheat, after general declarator pursuing a special, wherein he craved the corn and increase thereof, growing upon the lands of _____, pertaining to the rebel yearly, of divers years, since his rebellion; and the donatar to the liferent of the same rebel, of these lands constitute by the Bishop of Dunkell, of whom the rebel held these lands, compearing, and *alleging*, that the farms which these lands were worth, and which they used to pay before the years libelled, during the which years libelled, the same were laboured by the rebel's self, ought to be defalked yearly off the crops, and ought to be adjudged to the superior, and to his donatar, and the King and his donatar had no right thereto; and that the same came not under the single escheat; and the King's donatar alleging, that the same fell under single escheat, and that the superior had no right for the by-gone years acclaimed, because the pursuit was for years of long time by-past, during the which space the superior made no use of his liferent, nor acclaimed the same, but suffered the rebel to continue in possession, *et facere fructus suos*, whereby the King had right thereto, as single escheat, and not the superior, nor his donatar, who has only obtained the gift of liferent in January 1630, since his gift from the King, since which gift of liferent he may seek the liferent, and duties of these lands, for subsequent years, but not for the years by-past. THE LORDS found, that the superior and his donatar, had only right to as many of the farms the years libelled, since the rebel was year and day rebel, as the land was worth, and in use before to pay of farm, and that yearly, of all years as well by-gone as in time coming, and that the King's donatar had no right thereto, but only to the rest of the crop, and increase of the corns, each of these years, which increase pertained to him, and not to the superior's donatar; and it being *alleged* by the rebel, that the expenses debursed upon the labouring of the land, winning, shearing, and collecting of the corns, expended by the rebel thereon, and also the seed sown yearly upon the ground, ought sicklike to be deducted yearly off the increase acclaimed, and the pursuer *alleging* in the contrary; and sicklike the rebel *alleging*, that besides the foresaid defalcations, there ought also to be defalked off the first end of the crop and

growth of the corns yearly, for the which he was pursued, the teinds, taxation due to the King for the lands, and the feu-duty paid to the superiors of these lands; and the donatar *alleging*, that these ought not to be defalked, THE LORDS found all the defalcations reasonable, and found that the same should be defalked to the donatar, out of the first end of the corns craved from this rebel, after probation, and in the end of the cause, except for the seed of the last year's increase, acclaimed by the donatar, which ought not to be deducted that year.

Act. *Nicolson & Aiton.*Alt. *Stuart & Macgill.*Clerk, *Gibson.**Fol. Dic. v. I. p. 253. Durie, p. 513.*

No 11.

1631. *March 10.* FRANCIS STUART *against* LA. SAMELSTON.

THE abbot of Coldinghame having set a tack of the teinds of Swinton to Hercules Stuart and his spouse, and the longest liver of them two respectively, for their lifetimes, and after their decease, to an heir during that heir's lifetime, and thereafter, for 19 years to that heir's heirs and assignees; Hercules, first and principal tacksman, being forefaulted, the gift of this forefaulture is disposed to Sir William Hume, in so far as concerned this tack, and by virtue whereof he is in possession of these teinds. Sir William being at the horn, the gift of his single escheat is granted to Mr Robert Foulis, who having made Alexander Hamilton assignee thereto, and he having transferred his right to Francis Stuart pursuer, son to John Stuart of Coldingham, who by virtue of the said escheat of Sir William Hume claiming right to the said tack, as falling under the said single escheat of the said Sir William who was donatar to the said forfaulture, so far as concerned the said tack, pursuing the La. Samelston as heir to the said Sir William, for the said teind-sheaves, which were intromitted with by her; and she *alleging* that the said tack being set, for sundry liferents, whereof there was one of the liferent tacksmen yet living, viz. the heir of Hercules Stuart, it fell not under the single escheat of the said Sir William, donatar to the forfaulture; for by the 15th act, Parliament 22d, James 6. 1617, it is statute, that liferent tacks shall not fall under single escheat, and the donatar's rebellion cannot cause that fall under escheat, which of its own nature is not comprehended under the same, as a liferent tack is; for albeit the donatar to his estate might have right to the teind-sheaves contained in that tack, so long as the rebel lived, yet now after his decease, his heir must be in the full right of the tack, for all the space that was to run thereof, after the said Sir William his decease, by whose decease the escheat cannot extend further, but must cease. THE LORDS found, that albeit this tack contraverted, was set for liferents, whereby it could not fall under single escheat of the liferent tacksman if he had been rebel, conform to the act of Parliament, yet the tacksman be.

No 12.

A tack to one, and after his decease to his heir for each of their lives, and after that for 19 years, having fallen to the King by forfeiture of the first tacksman, and being gifted, was found in the person of the donatar to fall under his single escheat, though in the person of the tacksman it would have fallen under his liferent escheat. It was also found that the donatar being rebel, his heir had no right to the tack.