

No 12.

ing forfaulted, and thereby the whole right of that tack devolved to the King, and to the donatar of the forfaulture, that forfaultry was of the same force, as if the tacksman had disponed the said tack, if he had never been forfaulted; in which case, if he had disponed the same, and that he had been rebel, who received the disposition, the same would have fallen under this single escheat, even so the donatar to the forfaultry being rebel, by his simple rebellion, albeit not year and day rebel, the donatar to his single escheat had the full right to the said tack, as if the same had been assigned; and found that the heir to the donatar of the forfaultry had no right thereto, but fell by his predecessor's rebellion totally, as said is; for the donatar to the forfaultry might have outlived the whole space of the tack, so that thereby it is evident, that it fell under his single escheat, and he might also have disponed the whole tack effectually, if he had not been rebel. And therefore as his disposition would have established the whole right to the acquirer of the same from him, the like did his rebellion to the king, and his donatar, and therefore the foresaid allegiance was repelled, for Hercules might have disponed the whole tack.

Act. *Stuart & Chairp.*Alt. *Nicolson, Lawrie, & Mowat.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 253. Durie, p. 579.*1632. July 24. JAMES RULE *against* L. BILLIE.

No 13.  
Found in conformity with  
No 6. p. 3616.

ONE JAMES RULE being donatar to the liferent of the Laird of Billie, and pursuing declarator thereon, the lands being holden of the Abbey of Coldingham, and the gift of liferent flowing from William Douglas his heir, who had the right of superiority competent to John Stewart, to whom the Abbacy of Coldingham was erected, in this process, James Renton, who had acquired the right of the lands controverted from the L. Billie, by virtue of a comprising deduced thereon by a lawful creditor, who had disponed the said comprising to him, and by virtue whereof he had been also diverse years in possession; all this time the L. Billie being a free liege, not at the horn by the space of four years after the comprising; in respect whereof he *alleged*, That the donatar nor superior had no right to the liferent of these lands, being comprised, as said is, before the rebellion from the vassal, and the compriser in possession, and which comprising must be also effectual to seclude the donatar and superior from the liferent, as if the vassal had by contract disponed his liferent, he then being at no horn, *quo casu* the subsequent rebellion of the vassal could never have prejudged the acquirer of the liferent in his right thereof, albeit no sasine, nor other deed had been done by the superior, to acknowledge the same.—THE LORDS repelled this allegiance, and found the liferent of the vassal's lands pertained to the superior, notwithstanding that the same were comprised, and possessed by the compriser before the vassal was rebel; in respect that the compriser was not *infest* nor seased by the superior in the lands, nor had the compriser charged

the pursuer to receive him upon the comprising, without which the LORDS found, that the vassal becoming rebel, albeit after the comprising, forfeited his life-rent to the superior, wherein the preceding comprising did not prejudice him; for not the comprising, but sasine, makes the real right of lands, *no casu* even as if there had been two comprisers, the first infeft, albeit last comprising, would have been preferred to the first compriser. And the LORDS found, That the Lord of erection, his submitting of his superiorities to the King, prejudices him not of his casualties of that erection, but that the same pertained to him, he not being satisfied therefor by the King, which is the condition of the submission. It was also found, That Billie's life-rent escheat of his lands, holden of John Stewart, fell under John Stewart's life-rent escheat, albeit the time when John Stewart was rebel year and day, his vassal was not then rebel, but was rebel thereafter; also a compriser infeft before Billie's annual rebellion by the King, Billie's self being standing infeft by the King, by the act of annexation, prejudged not John Stewart, to whom that benefice was erected before that comprising, and infeftment of the comprisers thereon, seeing the King by that erection ceased to be superior, and John Stewart became superior, of whom he should have taken the infeftment, for by that erection, the annexation of that benefice was rescinded.

Act. *Stuart et Craig.*Alt. *Nicolson.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 253. Dnrie, p. 649.*

1634. February 4.

L. WEDDERBURN *against* STEWART of Coldingham, and Others.

JOHN STEWART of Coldingham, and Robert Douglas, who was donatar to John Stewart's life-rent, and which was declared, and whereby the said donatar had also right to the life-rent of the lands of ———, which pertained in feu to the L. Wedderburn, holden by him in feu of Coldingham, through Wedderburn's rebellion year and day, whereby the life-rent of these lands fell to John Stewart, and consequently to the donatar of the said John Stewart's life-rent, as a casualty accreting to the superior; and consequently coming under his life-rent, and so pertaining to the donatar; the said superior, and the said donatar recover decret, reducing and annulling the said L. of Wedderburn his feu of the said lands, upon the act of Parliament, for not payment of the feu-duty; which decret being desired to be reduced at the instance of the L. Wedderburn, upon this reason, That no such sentence could be sought, nor no such action pursued, at the instance of John Stewart, because the same was only competent by virtue of the alleged right of superiority of the said lands; and it was of verity, that before that pursuit he ceased to be his superior, in so far as he had resigned all his right of the superiority long before that pursuit,

No 14.

Actions for annulling feus, for not payment of feu-duty, are not competent to be pursued by the donatar of the superior's life-rent.