tar, by virtue of any subsequent rebellion after his right, the LORDS repelled this allegeance, and found, that the donatar had right thereto, in respect the infeftment excepted upon, was confessed to be a base infeftment, and not clothed with possession, and therefore could not be valid to seclude the donatar, no more than the base infeftment foresaid would have excluded a posterior public right, acquired after the base, being clothed with possession: But this instance of the public right, clad with possession, meets not this case, where none of the parties are in possession, but are presently claiming the same; and if, in the instance adduced, the prior base right, and the posterior public, were contending for the possession, the same scruple would remain.

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uuless either confirmed or clothed with possession before the annual rebellion existed.

Act. *Stuart.* Alt. *Nicolson & Belshes.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 256. *Durie, p.* 680.

1634. *December* 3. LINDSAY *against* SCOT.

No 62.
Found in conformity with No 57. p. 3659.

MR JAMES LINDSAY, servitor to the Bishop of Glasgow, having obtained the gift of liferent of Scot of Well, and general declarator thereupon, pursues special declarator against one Scot, for the mails and duties of the lands of ——, whereof the defenders alleging, that they had a contract of alienation of the said lands, under reversion, made to them by the rebel's father, and by virtue thereof they had been 38 years in possession; and the donatar *answering*, that it was not a good right, which could militate against the donatar, not being real, nor any infeftment taken thereon, no more than it would meet a singular successor. THE LORDS repelled the allegeance, and found, that the contract of wadset granted by the rebel's father, could not defend now after the decease of the father, his son being rebel, who was his apparent heir; seeing the defender had no real right, without which it would not meet the singular successor, nor the donatar, who now was as favourable as a singular successor, and more favourable than any other, in respect he had the superior's right, in whose person there was an heritable right of the land, which carried with it the effect of the property, so long as there was not a legal vassal, and this cannot exclude the superior's self, and no more his donatar.

Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 256. *Durie, p.* 738.

1642. *February* 8. WEDDEL *against* E. FINLATER.

No 63.
Found in conformity with No 50. p. 3659.

ONE Weddel having comprised James Ogilvy's lands, and being infeft therein by the Earl of Finlater's precept, who was superior; wherein it was provided, that that entry should be without prejudice of the Earl's right to the land, by

No 63. the vassal's rebellion; upon this infeftment, removing being pursued, the Earl compears and propones, that the vassal was year and day at the horn, therefore in respect of the provision foresaid, the pursuer cannot pursue removing, seeing he accepted the precept, with that clause. The Lords repelled this allegeance, in respect there was no declarator obtained of the vassal's liferent.

Fol. Dic. v. 1. *p.* 256. *Durie, p.* 891.

1667. *February* 21. Robert Miln *against* Clarkson.

No 64.
Found in conformity with No 61. p. 3662.

Robert Miln, as donatar to a liferent escheat, having obtained a general declarator, insists now in a special declarator for mails and duties. It is *alleged* for Clarkson, That the pursuer has no right to the mails and duties, because he stands infeft before the rebellion. It was *answered*, Any infeftment Clarkson has, is but a base infeftment, never clad with possession till the rebellion, and year and day was run, and so is null as to the superior or his donatar. It was *answered*, That the base infeftment is valid in itself, and albeit by the act of Parliament 1540, a posterior public infeftment for causes onerous, be preferable, yet that cannot be extended to the right of a liferent escheat, or to a donatar. It was *answered*, That by the course of rebellion year and day, the superior's infeftment revives as to the property, during the rebel's liferent, and cannot but be in as good condition as any posterior public infeftment; and it was so decided, Lady Renton *contra* Blackader, No 61. p. 3662.

The Lords found that the base infeftment, though prior to the denunciation, not having attained possession within year and day, could not exclude the liferent escheat.

Fol. Dic. v. 1. *p.* 256. *Stair, v.* 1. *p.* 448.

1672. *January* 19. Beaton *against* Scot of Lethem.

No 65.
Found in conformity with No 57. p. 3660.

In a double poinding, raised by the tenant of Etherny, betwixt Mr William Beaton, donatar to the liferent escheat of Rig of Etherny, and an infeftment of annualrent, holden of Etherny, and clad with possession before the rebellion, granted to Scot of Lethem, it was *alleged* for the donatar, That by the liferent escheat of Etherny, the fee of his lands returning to his superior, he or his donatar behoved to enjoy the same, free of any burden induced by the vassal, unless consented to by the superior, or approven by law. It was *answered*, That albeit it be true, that where fees return to the superior *ex natura feudi*, either by ward, non-entry, or recognition, they return as little burdened as when they were granted; but it is not so in the case of liferent escheat, which does not arise from the nature of the feudal contract, but from statute or custom, upon disobedience to law, or civil rebellion, which is not a feudal