

whereupon it proceeded. Albeit neither did the Officers of State quarrel it, nor was there any competing Donatory in the Field 20 Novemb. 1628 *Wester contra Stewart*. Seeing if such a Gift were sustained, the Donatory would always apply the Gift to one of the meanest Debts of the Outlaw, because he is bound by his Gift to pay the Debt in the Morning. An Erection of Kirk-Lands while in the Hands of a Commendator into a temporal Lordship, was postponed to a posterior Erection in Favour of the Commendator himself, when the Benefice was vacant by his Dimission 29 Feb 1666 *Smelar contra L. Wedderburn*. A Gift of single Escheat not bearing expressly goods to be acquired, extends no further than to goods the denounced Party had the Time of the Gift 2 Feb 1627 *Somervell contra Kirking*. Yea a Gift not only bearing the goods the Rebel had, but what he should acquire thereafter during the Rebellion was extended only to what he had the Time of the Gift, and should happen to acquire within Year and Day thereafter 25 Novemb. 1626 *E. Kinghorn contra Wood*. But yet thereafter a Gift bearing not only what belonged to the Rebel at the Time of the Rebellion, but had fallen and should fall accrue or belong to him during his remaining at the Florn, was found to carry Right to a Debt paid due to him many Years after the Rebellion 8 Feb. 1712. *L. Minto contra Marshal*. Because whatever dooth not fall under the Liferent Escheat after the Annual Rebellion, falls under the single Escheat. And when the single Escheat is restricted to what shall belong to the Rebel within Year and Day, that is in Relation to the Rents or Product of an heretable Subject. Limitations are ordinarily put upon the King's Gifts that his Majesty may not suffer Prejudice thro' the Default or Negligence of his Officers. But Gifts of Escheat by a Lord of Regality, are effectual according to the fact, to wit both as to goods before and after the Gift, and are sustained in general Terms, and tho' granted before the Casualty fall, if a special Gift after fact of the Casualty be not in Competition: Because private Men ought sibi invigilare. *Sair Jho. 5. 20.*

Any Gift of Escheat, Single or Liferent, taken simulatively to the Benefit of the Rebel is null. *Act 145. Jan. 12. Jb.* Seeing otherwise the falling of their Escheat would no ways discourage civil Rebellion or Outlawry. Which Simulation of a Gift may either be proved directly by the Donatory's oath 16 Decemb. 1670 *Langtown contra Scot* or may be inferred from Presumptions. As 1. The Rebels continuing in Possession after the Gift, or his Wife Children or Friends to his Behoof. *Act 145* is a Presumption that the Gift is taken simulatively. How long Possession may suffice to work this Presumption is in arbitrio judicis: For the Outlaw ordinarily keeps Possession, till the Donatory turn him out by Diligence, and that he stays some Time. Simulation of a Gift was drawn from the Donatory's suffi-

suffering the Rebel to possess 4 or 5 Years: Albeit the Donatory obtained a general Declarator of the Escheat long before, and was himself a Creditor and the Lands were apprifed before the Outlawry; seeing the Apprifed did not possess, and the Donatory being a Creditor did not alter the Case, seeing he might have been and Law presumes he was satisfied, or it was his own Fault if he was not, whose Negligence with the common Debtor should not prejudice other Creditors who would have Right after he was paid, like being ordinarily affected with Back Bonds in Favour of Creditors. 6 & 9 January 1666 *Oliphant contra Drummond*. A Donatory of Liferent Escheat who, in Satisfaction of Debts owing to him by the Outlaw, had acquired from him before and after the Gift irredeemable Rights of Lands having not only suffered the Rebel to possess 4 or 5 Years after the Gift and general Declarator, but also taken from him a Vassal of some of the Lands, and consented to his granting Vassals and selling Tracts of other Lands to other Persons and allowed him to apply the Money received for the same to his own Use: The Gift was sustained as a Security to the Donatory for any irredeemable Rights acquired by him before & since the Gift, but annulled as simulate with Respect to any redeemable Rights granted to the Donatory, or to others with his Consent, albeit he was Cautioner for the Rebel when he obtained the Gift, in regard he might have relieved himself of that Burden, had he not continued at the Rebel's Objection and uplifting 23 Decemb. 1623 *Banquhalyne contra Murray*. The Presumption that a Gift is simulate from the Rebel's being continued to possess, holds only in that Case where he has a considerable visible Estate of Lands or Tracts and possesseth the same; and not when he is suffered to possess either an inconsiderable Estate or such as consists in personal Bonds not known to the Donatory, which he the Donatory was not bound to look after 20 Decemb. 1676 *Veitch contra Dallat* observed by *Sair and Broleton*. A Gift of Liferent Escheat was not found simulate for the Rebel's continuing to possess a small Part of his Estate remote from the rest, the Donatory's Chigry having so far prosecuted his Right, as to obtain Possession of the great Part of the Estate by Virtue of the Gift and other Rights in his Person 19 Feb. 1713 *White contra Reid*. Another Presumption of a Gift's being simulate is drawn from its being granted to the Rebel's Children in Familia 25 June 1622. *L. Borthwick's Daughters contra their Father*. But a Gift is not held to be for the Rebel's Behoof, simply for its being granted to his Son for is familiare and having a Deculium 20 March 1623 *Dalgarno contra E. Marshal* 4 Decemb. 1669