

1669 Jaffery contra Jaffery. 3. A gift is presumed to be for the Rebel's Behoof, that is proved and passed the Seals upon his Expenses 28 Novemb. 1626 E. Kinghorn contra Wood. Which was sustained not only against the Donatary, but also against an Assigny for an onerous cause not Portaken of the Fraud. In Respect other Creditors had affected the Outlaw's Goods by Arrestment before the Assignation 10 December 1623 Douglase and others contra Bellhes. And the Case should be considered as at the Time of the Arrestment when the Allegiance would have been relevant against the Donatary; and the subsequent Assignation could not disappoint anterior lawful Diligence. However a gift in Favour of a Creditor was sustained good, for Payment of the Debt justly owing to him by the Rebel, tho proved by the Rebel's Moyer and Charges: Which he might lawfully do, even as he might pay his Debt to the Donatary; and the gift was quarrellable only as to the Profit beyond that Debt 11 March 1629 Douglase contra L. Eastmisset. A Rebel having taken a gift of his own Escheat Blank in the Donatary's Name and afterwards delivered it to a lawful Creditor for Payment of his Debt; the same was found null even as to that Creditor 17 Decemb. 1670 Langloin contra Scot. Because the gift was originally null, et quod inilio vitiosum est tractu temporis non requirit convalescere. Simulation of a gift taken by a Party who had bought Land for securing himself against the Seller's Escheat fallen, was inferred from the Seller's allowing the Expence of the gift in the Price of the Land; proved, that he knew of the Party's Right being perfected before he took the Disposition of the Land, and was thereby particeps fraudis with the Seller who granted double Dispositions; but no other Ways 22 June 1669 Hamilton or Corse contra Hamilton and V. Frenndraught. That a gift of Escheat from the King was purchased by the Rebel's Moyer and Means, may be proved per membrum curie, by the Officers and Members of the Eschequer 28 Novemb. 1626 E. Kinghorn contra Wood unless the Donatary hath made Faith at passing of the gift, that it was truly to his own Behoof 4 Decemb. 1669 Jaffery contra Jaffery. A gift of Escheat from a Subject Superior, may be proved to be simulate, by the Oath of the Superior and Witnesses inserted in the gift 19 June 1669 Scot contra Langloin. Gifts of Escheat may be quarrelled as null and sunnigte to the Rebel's Behoof, by second Donatories 6 January 1666 Ophiant contra Drummond. Yea a second Donatary upon Production of his gift with the Horning whereupon it proceeded is allowed, without Declarator, to object against the first gift, where both gifts proceed upon the same Horning 20 Novemb. 1629 Lunde contra Lunde. But where two gifts were taken upon distinct Hornings, one of these gifts without a general Declarator was not sustained to compete with the other gift declared 29 January 1719 White contra

contra Reid. Gifts of Escheat may be also quarrelled, not only by the Creditor at whose Instance the Rebel was denounced, but also by any other Creditor using Diligence to affect the Escheat Goods 28 March 1637 Hamibter contra Tonar's Stair Lib. 3. Tit. 3. §. 21. in fin. But not by the Rebel's voluntary Assigny, deriving Right from him after the Escheat was gifted and declared 10 January 1712 White contra Reid. Generally it sufficeth to purge any Presumption of Simulation, that the Donatary granted Back-Bond to the Eschequer in Favour of the Rebel's Creditors, and offers to make Faith that the gift is to his own Behoof 4 Decemb. 1669 Jaffery contra Jaffery 12 December 1673 Dickson contra Mculloch. Gifts of Escheat are quarrellable as simulate to the Rebel's Behoof, only when he is unrelaxed at the Date of the gift. For if he was then relaxed the gift may be effectually made to himself expressly, and consequently to any for his Use; so as a second gift could not take Place, tho it would exclude no Creditor's Part. But a gift by the King to the Rebel himself or to any for his Behoof before Relaxation returns and accerries to the King, who may confer a new gift upon another. And the second Donatary may quarrel the first gift, tho no Creditor do it. Nay, if a valid gift be assigned by the Donatary to the Rebel unrelaxed, the King hath thereby jus quæsitum to grant a new Right to the same Escheat in Favour of another 6 July 1627 P. Anondale contra Murray. And where a Person is at the Horn when his Escheat is gifted by the Sovereign to his own Behoof; or after Relaxation cannot hinder his Disposal to dispose the same to a second Donatary, tho no Creditor find Prejudice by the first gift. 28 Novemb. 1626 E. Kinghorn contra Wood.

A Donatary of single Escheat (if his Title be the Kings gift) must with the Concurrence of the Kings Advocate raise upon his gift a Process of general Declarator, wherein it is tried if the Rebel was lawfully denounced, and all his escheatable Goods should belong to the Donatary.

The Tenor of a Summons of general Declarator of single Escheat runs thus. Our Will is, and we charge you lawfully summon B. or his Wife, Bairns or next of Kin he being deceased, to compare &c. to answer at the Instance of A. Lord or Bailie of the Regality of &c. or of our or their Donator, by Virtue of our or their gift of single Escheat, dated &c. that is to say the said Defender to hear and see it found and declared, that he was lawfully denounced Rebel and put to the Horn, at the Instance of &c. by Virtue of Letters of Horning duly executed against him, which Denunciation is of the Date &c. and the said Horning is registered in the Register of Hornings at &c. And that therethrough all movable Goods and all other movable and escheatable Rights, which did belong to the said Defender, the Time of the Denunciation, or that accrued or did belong to him at any Time thereafter before he be duly relaxed from the Horn, doth belong and appertain to the Complainer, as his own proper Goods and Rights,