

it found and declared, that the said Defender was lawfully denounced upon Letters of Horning raised at the Instance of &c. for the causes therein, which Letters are dated &c. duly registered in the Register of Hornings at E. conform to the Act of Parliament, and that he hath contemptuously remained unrelaxed therefrom for the space of Year and Day from the Date of the fore-said Denunciation. And that thereby the said Lands are become in the Hands of the said Superior, and that of all Years and Terms since the said Denunciation, are yearly enclosed from the Horn conform to the Laws and daily practised of this our Realm in all Points &c. In this Process, the Horning Gift from the Superior and his own Vassal is a sufficient active Title, without Necessity to instruct the Defender to be Vassal; unless either the Superior be a singular Successor never acknowledged by the Defender or his Predecessors, or they disclaim him as not their Superior 2 July 1622 Carmichael contra Lermouth 6 March 1624 Douglas contra L. Eastmisset 23 June 1625 V. Stormont contra his Vassal Fair Lib. 2. Tit. 4. §. 69. Lib. 3. Tit. 3. §. 26. in fin.

A general Declarator of Liferent Escheat being obtained and extracted, the Superior has Access to purchase a special Declarator, that is an Abolition of the Mails and Duties of the Fee from the Denunciation, and such such remove Tenants and do other Deeds of Property in the same Manner as in Ward Fair Lib. 2. Tit. 4. §. 69. Seeing the Liferent Escheat falls by the Rebellion, if the Rebel relax not within Year and Day the Liferent Escheat takes Effect from the Denunciation McKenzie Lib. 2. Tit. 5. §. 28. V. 9. If a person denounced in April continue Year and Day at the Horn; the Superior will have Right to the Duties resting by the Tenants for the subsequent Whit Sunday and Martinmas if once the Escheat be declared: And the Rebel, if he labour the ground himself, is liable to the Superior for the Duty of that Year as a Tenant Stewart answers to Dirlot. Doubts Tit. Liferent Escheat

Sir John Misset (Deus. 29 Leslie contra Leslie 8 Decemb. 1666 thinks, that a Declarator of single and Liferent Escheat may be raised upon a Horning executed by Denunciation and Registration 40 Years before and that such Horning doth not prescribe. vid. infra pag.

In a special Declarator of Escheat single or Liferent a Competition sometimes arises between the Pursuer and another Donatary and more often between the Pursuer and the Creditors or singular Successors of the Rebel. In a Competition of Donatories, the last Gift, if first declared in general, is preferred. A Gift of Escheat first past the Privy Seal, was preferred to another first past in Exchequer, tho' the flavor of that other Gift took Instruments against the Keeper of the Seal for delaying to

to give him out his Gift: In Respect the Instrument was after the completion Gift was sealed, tho' it mentioned that the Keeper of the Seal acknowledged the Taker of the Instrument to have formerly required out his Gift, seeing that was but the Assertion of a Notary or of the Keeper of the Seal 6 Decemb. 1662 Stewart contra Nasmyth. When a Donatary hath to do with Creditors or singular Successors of the Outlaw; it is to be determined, how far his Debts and Deeds affect and burden his Escheat.

Single Escheat is affected: 1. By the Debt in the Horning upon which the Escheat fell and the Expence thereof Act 7 Nov. 4. Q. M. Act 75 Par. 6. §. 6. Which all Intromitters with the Escheat Goods are liable to pay Act 143. Par. 12. §. 6. as well as the Donatary, and Summons may be directed against them for that Effect upon 6 Days Warning. Because it were unjust, that a Creditor coming Diligence for recovering Debt due to him, should be disappointed of Payment by the Effect of his own Diligence. This is a Kind of vicious Intromission, which makes the Intromitter liable in solidum, tho' his Intromission was inconsiderable. The Donatary will not be found liable till after general Declarator because he comes not till then in the Rebel's Place; tho' his Neglect to pursue a Declarator ought not to prejudice a Creditor. Nor is a Donatary not intromitting liable, if the Horning upon which his Gift proceeded be null. McKenzie Observ. on Act 143. Par. 12. §. 6. But if res be not integra by his having intromitted, his offering to renounce the Gift will not exoner him 18 March 1631 Fletcher contra Kid. A Donatary was once found not subject to pay the Creditor in the Horning Annualrent falling due after the Denunciation, because the Act of Parliament makes him liable only for the Debt contained in the Horning 15. March 1631 Fletcher contra Kid. But Sir George McKenzie (Ibid.) doubts, if this Decision may be relied on: Because the Donatary being liable for the Debt, accipitum sequitur suum principale; and if the Debtor had got the Escheat Goods, the Creditor had got complete Payment. The Lord Stair (Lib. 3. Tit. 3. §. 16) doubts, and I have not yet seen it decided, whether the Debt in any Horning whereof a Gift of Escheat is taken should burden it: Because it being the first Horning which makes the Rebellion, the Escheat should be affected only with the Debt therein? And tho' any Horning produced is presumed to be the first, till another doth appear, yet in a Competition of Gifts upon different Hornings, Preference should be given with the Burden of the Debt to the first Horning. Inquiritur how far lawful Creditors for Debts owing by a Rebel civil or criminal before Denunciation