

or Commission of the Crime, using Diligence or obtaining Assignations
intimated, or Dispositions clothed with Possession after Denunciation of the
criminal Fact, and before Declarator, may affect the Escheat Goods? It is ans-
=wered, that in strict Law *ius est quæsitum Fisco* by the Denunciation or Com-
=mission of the Crime, and the Declarator (tho as an Assignation it constitute
the Donatory's Right) doth not constitute the Fisk's Right, but according to
the Nature of all Declarators which are drawn back ad eam causam, declare
it to have been from the Denunciation or criminal Fact. So that the real
Right passing thud to the Fisk without Possession or the Knowledge of the Fisk
=sted in the full extent of its Right, would exclude all the Rebels Deeds pre-
=terior in Favour of his anterior Creditors, or posterior Diligence us-
=them. But such is the royal Bounty of our Kings and their Favour to in-
=full Creditors, that they have ever accounted *is solum nostrum quos debetis*
deonibus est nostrum: They claim only the Overplus remaining after pay-
=ment of just and lawful Debts, Upon which Consideration Gifts of Escheat
are usually in a Competition given to Creditors before others, and Backbonds
taken from the Obtainers in Favour of other Creditors: Which Gift the
=natory cannot assign but with the Burden of the Backbond Stewart for
Tit. Gift of Escheat with Backbond. It is true, that if in a Gift of Escheat
granted by the King, it be expressly declared, there should be no Backbond,
the gift may hold, as well as Gifts of Escheat by Lords of Regality and
other Superiors without Backbond. But it is the Custom of Exchequer to
take no Gift of Escheat without a Backbond: and if the gift should declare
his Majesty's Pleasure to have no Backbond taken from the Donatory, it
is thought the Exchequer would represent it to the King before they passed
the gift Stewart for. Tit. Escheat without Backbond. A Gift of Escheat
not having been ^{given} gratis upon any special Consideration, but passing in
common Form, and being taken without giving the ordinary Backbond
restricting the gift to the Debt in the Forning, the Donatory's own Debt
and his Expences: the same was found to have been surreptitiously taken
=out and to be in the same Condition as if the Backbond had been granted,
and that to the Prejudice of the Donatory's singular Successor: In respect
of an Act of Exchequer Anno 1661 prohibiting to expedite Gifts of
Escheat till the Treasurer or ^{his} Deputy were satisfied with the Backbond, altho
the Act contained no Clause that the gift should be null, or affected with
a Backbond if it passed otherwise. Because the expediting the gift ~~being~~
~~being~~ being contrary to the Act *specta auctoritate iudiciali* and unwarrant-
=able,

=able, is *vitiū reale*, which singular Successors cannot be ensnared by
seeing they know it to be ordinary to give Backbonds 22 Feb. 1672. Gre-
=juror Depute contra Aytton. Creditors doing Diligence before Declarator for
Debts prior to the Outlawry, or Commission of the Crime inferring Escheat,
are preferred to the Donatory. Spotswood Brall. Tit. Escheat. Visiter contra
=Shillerton Stair Lib. 3. Tit. 9. §. 16. even where these anterior Creditors have us-
=only imputed Diligence by Arrestment after the Denunciation before the gift
or Declarator 24 Feb. 1637 Dilmor contra L. Gaigie 19 Feb. 1667 Glen
contra Hume. An Exet Creditors confirming after his Debtors single
Escheat was gifted to another Creditor and the gift sealed and registered,
but not declared, for a Debt due to the Exet before the Rebellion, was pre-
=ferred to the Donatory of Novemb. 1710 Northwick contra Archibald.
Because Confirmation is a complete Assignation to the Subject confirmed:
Whereas a sealed Gift of Escheat is not a complete Right to the Escheat
=goods, till it be declared, it being only known by the Declarator, that the at-
=tality is duly fallen. For the generally Declarators nihil novi juris tributum
they only ascertain and declare what was formerly obtained: Yet Declarators
of Escheat are of another peculiar Nature by the Favour our Law shows to
lawful Creditors. But a Creditor having obtained a Gift of his Debtors against
his Payment of the Debt owing to himself, the Donatory being also a Creditor,
was preferred upon that point Interest to another Creditor who had arrested the
Rebels goods before the gift pen. Feb. 1623 Kalsburton contra L. Perth's
Debtors. And a Donatory of Escheat declared in general, was preferred to one
arresting after the gift before Declarator, for a Debt due before the Rebellion,
upon this Speciality, that the Donatory's gift provided upon his own Forning,
and he obtained a Declarator before the Arrestor recovered a Decree of For-
=coming 24 January 1712 Erskin contra Elliot. 3. An Assignation or Dec-
=granted after Rebellion, and intimated before Declarator, in Implement of
an Obligation to grant it before the Rebellion, doth exclude the Donatory
Stair for. If the Donatory was excluded by a Bond dated after the Outlawry, in
Implement of a Contract before it, albeit the Bond was not granted in corre-
==ration, of the Contract, but a new Bond in Lieu of the Contract which was
=discharged 20 January 1676 Jackson contra Simpson. 4. An Assignation after
Denunciation, for a Debt anterior to it, getting, before Declarator Set's faction
of his Debt, by Payment, or renewed Bonds, innovating the Rebels Bond is
secure and not obliged to restore the same to the Donatory 10 Decemb. 1673
69 Feb. 1675 Veitch contra Pallet. *Quia sum tantum receipt, diamer a*
non debitor. and Satisfaction of a Debt, may be not only by Payment, but
also by Innovation Delegation or Compensation. For the Assigning had be-
=got