

got Payment from <sup>his</sup> Decent's Debtor, could not be hindered to <sup>send</sup> back the Money to the same Debtor upon a new Bond or new Security granted to him self, which is equivalent to Payment the Creditor being changed. Further, such an Assigny getting Payment, is not obliged to restore, because he is presumed upon that account *laudius vicise*. 5. A Person getting Goods delivered to him by his Debtor at the Horn, before gifting of the Escheat, in Satisfaction of a just Debt, is preferred to the Donatory 10 Feb. 1635 *Mosman contra Lockhart and Loing*. Movables being more easily transmissible in Favour of Commerce, and affording a presumptive Title to the Possessor for Denunciation of the Owner of Movables to the Horn, doth no ways relate to or affect them, as Denunciation of Lands to be appraised effects the Lands so, as the Heretor can by no voluntary Deed disapprove the Effect of such Diligence. Thus the Lords thought that forming did not hinder a Decent denounced from the Administration of his Goods, farther than not to alienate in fraudem fieri: As by gifting or paying Debts contracted after the Rebellion, or precipitately assigning to prevent the King or his Donatory using rational Diligence in Prosecution of the Right of Escheat. But where the King or his Donatory after Denunciation lies by without insisting, the Outlaw may pay his Creditors or make Assignations to them: for Payment of just Debts before the Outlawry 19 Decemb. 1607 *Heland contra Rome*. The Buyer of Goods bona fide from an Outlaw for a Price given is also secure against the Donatory, and the Price accueth to the Fish Stairs. A Creditor having affected his deceased Debtors Movables by Confirmation and got Possession thereof whereby his Debt is satisfied, a Donatory of the Debtors Escheat cannot evict them *Stewart answers to Durlit Doubt* fit for belonging to Reb. at the Horn. For a Gift of Escheat is but a Step of Diligence having Preference according as it is lawfully prosecuted: And qui suum receipt conditione non tenetur; and a Rebel may not only dispose, but even his goods may be poinded for Payment of his Debt, but 6. Debts or Deeds of the denounced Party do not affect the Escheat Goods, unless they be consented, or lawful Diligence done for that End, before the Donatory obtain Declarator: Which being an Intimation of his Gift renders it a complete Right, exclusive of any Creditor then wanting a perfect Right or legal Diligence. *Stair libid*. Therefore a Donatory was preferred to a lawful Creditor arresting after general Declarator obtained by the former 27 Feb. 1620 *Anderson contra Gordon*. And a voluntary Assignation granted by a Person before he was denounced for Debt (*Hope Maj. Pratt* fit. Assignations Clerk *contra Napier*, *Crawford contra McAul*) or had committed a Crime in favour of Escheat (*Stair libid*, *Gordon and Chambers contra Gordon*) and intimated after the Denunciation or Crime committed, did not prejudice the King's Donatory.

Further

Further, no legal Diligence or voluntary Right, for Payment of any Debt contracted after the Rebellion or Assignation granted after Rebellion for a Debt anterior to it, and intimated before Declarator, will be preferred to the Donatory, if the Debt due to the Rebel remain unsatisfied or not extinct 18 Decemb. 1629 *L. Caprington contra Cunningham* 6. Decemb. 1631 & 2. 6. Feb. 1633 *L. Lonheath contra L. Earlston* 10 Decemb. 1673 *Veitch contra Nat* - lat 10 January 1678 *Quives contra Deans* 17 June 1712 *Her of Challo contra Creditors of Harden*. And where a Bond was granted by me after he was at the Horn, the Narrative thereof bearing that it was granted for Wines truly furnished to him before the Rebellion, was found not to prove against the King, because it was only the Rebels Assertion: But the Allegation was found relevant to be proved by the Rebels Count Book, and by Books of Entry, and not simply by Witnesses without such Instruments in Writ 20 Decemb. 1676 *Veitch contra Pallat* observed by *Durleton*. Nor would actual Payment made to the Assigny after Declarator secure him from Restitution to the Donatory according to the interdictum observed by *Stair*. But yet the Lords decided otherwise when *Stair* *George Lockhart* presided in the Court of Session. For in a Competition between an Assigny and a Donatory of the Decent's Escheat where the Assignation was made after Denunciation of the Decent to the Horn, for a Debt intimated before the Outlawry and intimated before the gift of his Escheat the Assigny was preferred to the Donatory; albeit the sum advanced was exact and remained unapplied by the Assigny, without any new Security granted to him for it. Because albeit in a Disposition of Movables where there was no real Delivery but only being simulated, the Determination of the Value of the Right may vary according as the Subject disposed is extant or not: Yet where sums of Money are assigned, and it doth not alter the case whether the Money be still unpaid or uplifted or a new Bond granted to the Assigny for it 14 Decemb. 1609 *Heland contra Rome*. For Intimation of the Assignation before the Gift was equivalent *fictioe credit* manus as if the Decent denounced had uplifted and delivered the Money to the Assigny for Payment of his Debt. When a Creditor gets Assignation to a good Bond, he has no left Reason to consider it as his own, than if it were paid; and may spend more liberally in View thereof, as knowing that Annual rent is to come in for it, than if he had the Money lying dead and unprofitable in his Cabinet. Besides, there seems to be as good Reason for the Donatory to claim the sum uplifted by the Assigny if extant in his Hand, as to seek it before uplifting: Because one who has Right to a Thing, is intitled to the Surrogatum, or that which comes in place thereof. It was not sustained in a Declarator of Escheat, to support a Disposition of Goods by an Outlaw since rebellion, that it was granted for the Price of Corn and Straw sold to him; and employed for the Entertainment of his Peasants and