

1628. February 22. ANDERSON *against* GORDON.

IN an action to make arrested goods furthcoming, betwixt Anderson, pursuer, and Gordon alleged debtor to Maxwell the pursuer's debtor, for making furthcoming to the pursuer a sum addebted by Gordon to Maxwell, and arrested by the pursuer in Gordon's hands, for payment of his debt owing by Maxwell, this Maxwell being at the horn, and his escheat disponed and gifted, and declared by a general declarator at the donatar's instance, before the executing of the arrestment at the pursuer's instance; and which donatar compar- ed in this process, and desired to be preferred to the creditor pursuer;—THE LORDS preferred the donatar to the creditor pursuer, in respect of the said general declarator obtained before the arrestment, albeit no special declarator was obtained by the donatar.

Act. *Mowat.*

Alt. *Cuninghame.*

Clerk, *Gibson.*

*Fol. Dic. v. I. p. 255. Durie, p. 348.*

1630. June 19. NISBET *against* LADY ABERCORN.

ONE Nisbet, creditor to the Lady, after sentence obtained against her by him, for payment of the debt, and after arrestment and sentence thereupon against her tenants for the same, the Lady's liferent is, after these decreets, dis- poned to Sir James Fullerton, falling by her excommunication and horning, whereat she remained year and day before the sentence upon arrestments at Nisbet's instance against her tenants; whereupon, in a double poinding, at the tenants instance against this Nisbet, and the donatar, which of them had right to the farms, the LORDS found, that albeit, the Lady was rebel year and day, before any sentence obtained by the creditor against her tenants, whereby the donatar claimed to be preferred to the creditor, seeing the King nor his donatar pay no debt, but the debt of the horning, whereupon the escheat is taken, and at the time of the expiring of the year, the duties of the rebel's lands pertain to the King, and not to any creditor thereafter arresting and obtaining sentence therefor: For he *alleged, hoc ipso momento*, after expiring of year and day instant- ly without declarator, the duties of the lands pertained to him, and could not be evicted by any other creditor thereafter arresting and obtaining decreet, albeit before the liferent was gifted and declared; seeing the matter ought not to be considered from the time of the gift and declarator, but from the time of the falling of the escheat. And the creditor *alleging*, That his arrestment and sentence, albeit after the horning year and day, yet being before both the gift and declarator, in respect of his diligence he ought to be preferred, seeing he had recovered sentence also against the rebel for the debt, before she was

No 37.

Found in conformity with No 35. p. 3641.

No 38.

Found in con- formity with Kirkness a- gainst For- ster, No 35. p. 3641.

No 38.

put to the horn ;—THE LORDS, in respect that the creditor had obtained sentence for his debt against the Lady, before she was rebel, albeit the arrestment and decret thereon were after the rebellion year and day, whereby the farms controverted were affected, and that the donatar's gift and declarator were long after the sentence upon the arrestment, yet the LORDS preferred the creditor in respect of his diligence.

Clerk, *Gibson*.

*Fol. Dic. v. 1. p. 255. Durie, p. 519.*

\* \* \* See This case by Spottiswood, *voce* GIFT OF ESCHEAT.

1637. February 24. PILMUIR against L. GAGIE.

No 39.  
Found in conformity with  
No 35. p.  
3641.

ONE being at the horn, who was debtor to Pilmuir, his creditor, for satisfying of which debt, the creditor arrests some moneys owing to his said debtor ; which arrestment was made after the horning, but before the escheat of the rebel was gifted by the E. Angus, Lord of the regality within which the rebel dwelt ; and the Laird of Gagie acquiring the gift of escheat from the Earl after the arrestment, and *contending*, that he should be answered as donatar, because he alleged, that his gift should be drawn back *ad suam causam*, and the rebel's goods, *hoc ipso momento* that he was rebel, pertained to the fisk, who pays none of the rebel's debts ; and albeit it was not declared the time of the arrestment, yet that could not be respected, seeing the declarator finds that the rebel was then at the horn, and that all the goods and gear pertaining to him, at that time of his denunciation, pertained to the Lord of the regality, *ergo* there was no place to any, either creditor or other, to claim any of that rebel's goods thereafter, which, by the rebellion, pertained to the fisk.—THE LORDS preferred the arrestment made before the gift, albeit after the horning, to the donatar who had acquired the escheat after the arrestment ; which gift, so acquired, the LORDS found did not derogate to the preceding diligence done by the creditor arresting as said is.

*Fol. Dic. v. 1. p. 255. Durie, p. 830.*

\* \* \* See This case by Spottiswood, *voce* GIFT OF ESCHEAT.

1662. January. CHALMERS against DALGARNO.

No 40.  
The same rule of preference followed as above.

MARJORY CHALMERS, as executrix confirmed to Patrick Gray her husband, having pursued the deceased William Keith for payment of a debt, she recovered sentence ; and after his death she pursues William Dalgarno, as intromitter with his goods before the English Judges. In which pursuit it was *alleged*, that the defender was donatar to the defunct's escheat, and so could not be convened as vitious intromitter with the defunct's goods ; his goods, by the rebellion, falling