

No 28.
compearance
in the other
summons, al-
though the
gift which
was prefer-
red, was dat-
ed three
months after
the other.

same long before Renton's summons, and called the same; but because it was executed upon six days citation, whereas it should have been executed upon 21 days, therefore he stood not at that citation, which could not have been lawful, but copied the summons again off the signet, and executed the same again *de novo* upon 21 days; which execution so made, and day of compearance was three days behind Renton's; and so Renton was preferred, as said is; and for no other defect, was Wedderburn rejected, but because his last execution was three days behind the other, and the day of compearance sicklike; for the Lords thought that Wedderburn might double his summons at the signet, and of new again summon the party thereby; albeit the other party contended, that he could not summon *de novo*, by virtue of that summons, which was once executed to another day of before, and which was insert therein, and called, and accepted in judgment by the party; but if he should use any other execution, it behoved to be by another new raised summons, and not by the same summons, or the double thereof, being executed, as said is; which was not respected, for the double was sustained; but for the priority of the other, the other was preferred, they being both creditors to the rebel; albeit Wedderburn offered instantly to satisfy all the debt, owing by the rebel to Renton. See PROCESS.

Act. *Advocatus et Nicolson.*

Alt. *Stuart.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 348. Durie, p. 748.

No 29.

In a competi-
tion between
donatars of
escheat, the
gift last past
the Exche-
quer, but
first past the
seals, was
preferred.

1662. December 6. GEORGE STEWART *against* MR JAMES NAYSMITH.

GEORGE STEWART having obtained the gift of the escheat of one Hume, pursues a general declarator, wherein compears Mr James Naysmith, having a declarator depending of the same escheat, and *alleged* he ought to be preferred, having his gift first past the Privy Seal, and had the first citation thereupon; George Stewart *answered*, that his gift was first past in Exchequer, and the composition paid in March, before the rebel was denounced on Mr James Naysmith's horning, whose gift past in Exchequer in June only, and *alleged*, that he being postponed, through the negligence of the keeper of the register, whom he had off desired to give him out his gift, it must be esteemed as truly then done; and as to the citation, both being now pursuing, he having done full diligence, could not be postponed, and produced an instrument taken against the keeper of the register, bearing him to have acknowledged, that the gift had been sought from him formerly.

THE LORDS having considered the instrument, and that it was after Naysmith's gift was sealed, although it mentioned former requisitions, that was but the assertion of the notary, or of the keeper of the register, and therefore preferred Naysmith's gift.

Fol. Dic. v. 1. p. 347. Stair, v. 1. p. 148.