

bond to his brother John within five months of his father's death, the said disposition is not effectual against Anne Mackay, who was a creditor to the father, being contrary to the enactment of the second clause of the statute 1661.

No 13.

To that judgment, which was brought under review by mutual petitions and answers, the Court adhered; with this only variation, that as it had been omitted to mention, that Anne's Mackay's preference was effectual on the wadset, this omission was now supplied. See INHIBITION.

Reporter, Lord Gardenstone.

For Mrs Anne Mackay, Elphinston.
Clerk, Home.

Alt. Honyman.

S.

Fol. Dic. v. 3. p. 166. Fac. Col. No 93. p. 144.

S E C T. II.

Decisions upon the act of Sederunt 1662*.

1685. March. CAPTAIN M'KEITH against KENNEDY.

No 14.

IN a special declarator at the instance of a donatar of escheat, compearance was made for an executor-creditor who had confirmed the subject, prior to the gift or general declarator; *alleged* for the donatar, that as the confirmation could not exclude another creditor doing diligence within six months after the rebel's decease, no more could it exclude the pursuer's declarator raised within the six months.—THE LORDS preferred the executor-creditor, in respect the act of sederunt only concerns creditors, and the donatar is in *causa pœnæ*.

Fol. Dic. v. 1. p. 206. Harcarse, MS. No 2.

** See The particulars of this case *voce* COMPENSATION, No 67. p. 2616.

1708. January 2. RAMSAY against NAIRN.

No 15.

WILLIAM NAIRN of Dunsinnan, being creditor to Young in Dunkeld, confirms himself executor-creditor to him, and thereby uplifts forty bolls of bear and malt he had lying in his barns. Mr David Ramsay being likewise a creditor, he confirms the same subject, with sundry other goods; and, being within the six months of the debtor's death, he pursues Dunsinnan to communicate to him a proportional part of what he had intermeddled with, in respect of the act of sederunt 1662, bringing in all creditors confirmed within six months of the defunct's decease *pari passu*. *Alleged*, Your confirmation is null, because there cannot be two principal testaments, and therefore, I being first confirmed, all

A testament being confirmed by the defunct's creditor, and the same subject being again confirmed by another creditor within the six months, the Lords found, that what-

* The object of this act of sederunt is explained in No 19. p. 3141.