

sister-in-law, &c. and so the horning is legally execute. THE LORDS repelled the nullity against the horning *hōc ordine*, reserving Chatto's reduction thereof as accords. 510, *Objected*, That Robert Scot having confirmed himself executor to Sir William, his brother, and found Chatto cautioner to make the inventory forthcoming, Robert could not dispoſe these goods, nor Chatto validly accept a right thereto, in prejudice of Sir William's creditors, the executor being but a fiduciary trust for the creditors' behoof. *Answered*, He does not plead his disposition to liberate him of his cautionry, but only that he must be pursued *via ordinaria*; and then he would allege Robert Scot, the principal executor, his representatives must be first discussed, ere they come to the cautioner. THE LORDS found, though the executor may assign the inventory, yet if he do it to his own cautioner, he may be debarred *objectione personali* to make use of it to the creditors' prejudice; for *quem de evictione tenet actio eundem agentem multo magis repellit exceptio*. 6to, *Alleged* for Chatto, That this competition was most invidious and merely in emulation; for Wall was uncontrovertedly secured on Sir William Scot's estate, where he could not miss his payment; and yet most unnecessarily they would have no subject but the debts assigned to him, and *malitiis non est indulgendum*: And if they think he must pay, then he is content to do it on their assigning him to their securities. *Answered*, Though an assignation seem favourable and specious in some cases, yet here it is only sought to be a handle to vex Highchester, now Harden's heir, whose estate is tailzied under irritancies. THE LORDS thought it *ius tertii* to the creditors to found on the heir's interest; and that they ought to assign: yet because it had not been fully pled, they remitted it to be farther heard before the Ordinary.

Fol. Dic. v. 1. p. 171. Fountainball, v. 2. p. 739.

See HEIR APPARENT.—BANKRUPT.—EXECUTION.

S E C T. V H

Objections against a Standing Infestment how Proponable.

1612. January 31.

ARTHUR against L. of BLEBO.

AN apparent heir may reduce a decret given against him in an action concerning the heritage to which he is apparent heir. Sasine given to an heir upon his retour by that superior whose father was denuded many years before, by resignation of the superiority in the superior's hands, for infestment to be given to a conqessor, will not be taken away by way of exception or reply.

Fol. Dic. v. 1. p. 172. Haddington, v. 2. No 2380.

No 34.

No 35.

A sasine given to an heir upon his retour, by a wrong superior, cannot be taken away by exception or reply.