

1662. *July 9.* ROBERT BONES *against* BARCLAY of Johnston.

ROBERT BONES having arrested certain goods and bestial, as belonging to John Wood, his debtor, in the hands of Barclay, pursues for making the same forthcoming.—The defender *alleged* absolvitor, because the goods libelled, the time of the arrestment, were the defender's proper goods, disposed to him by the said John Wood, for anterior rests and debts, and delivered also before the arrestment.—It was *replied*, The defence ought to be repelled, because Wood the disposer was rebel and at the horn, before the delivery of the goods at the pursuer's instance; and whereby the tradition being after the horning, the disposition is null, as being incomplete before the horning; and after the horning, the rebel could do nothing to prejudge the King, or his donatar, or the pursuer, for the debt, whereupon he was denuded, which by the act of Parliament 1621, affects goods *ubicunque*.—The defender *answered*, That the reply is not relevant, unless it were alleged that the horning had been before the disposition; for it is lawful for creditors either to poind, arrest, or take dispositions of their debtors goods though rebel, being for debts anterior to the horning, if the disposition and delivery be prior to declarator; neither can the act of Parliament 1621, against dispositions in defraud of creditors, operate here; because the disposition is anterior to the horning, and for an onerous cause.

THE LORDS found the defence relevant, notwithstanding the reply.

Fol. Dic. v. 1. p. 255. Stair, v. 1. p. 123.

No 49.
Found as
above.

S. E. C. T. VII.

Competition Single Esheat with Executor-creditor.

1628. *March 18.* LAIRD of LEES *against* LINDSAY.

WILLIAM BLAIR dies at the horn, at the young Laird of Lees' instance, who had paid 500 merks as cautioner for him, and for recovery of his just debt, takes the gift of the defunct's esheat; but before he obtained the gift, Thomas Lindsay merchant, to whom the said umquhile William Blair was addebted, confirms himself executor dative to the defunct for payment of the debts, and obtains both sentence and payment before young Lees obtained the gift of esheat; but when young Lees pursues a special declarator, compares the said Thomas Lindsay for his interest, and alleges no declarator for the goods which

No 50.
A creditor confirmed himself executor dative to his deceased debtor, and obtained decree against the defunct's debtors, and payment from them. The donatar of the defunct's esheat pur-