

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