

\* \* Spottiswood reports the same case :

IN a general declarator of an escheat, it being *alleged* that the horning is null, because before the charge, or denunciation at least, the debt was paid, and discharge thereof given by the creditor ; it will not be received, but the horning must abide a reduction, whereunto the King's Advocate and Treasurer must be called ; for otherwise the rebel and the creditor might collude together in prejudice of the fisk and the donatar, by granting a discharge antedated. Found betwixt James Douglas, council macer, and the Creditors of umquhile Mr John Wardlaw, whose escheat James was seeking to be declared.

*Spottiswood, (ESCHEAT.) p. 104.*

No 32.  
rebel and creditors might collude in prejudice of the fisk, by antedating the discharge.

1662. July 22. WILLIAM MONTGOMERY *against* THEODORE MONTGOMERY.

WILLIAM MONTGOMERY, as donatar to the escheat of Theodore Montgomery, pursues a general and special declarator in one libel, and insists, first, in the general.—The defender *alleges* absolutor, because the horning is null, the denunciation being at the cross of Edinburgh, where the defender had not his domicile. The pursuer opposed the horning standing, bearing, the defender to dwell in Edinburgh, and the horning could not be taken away by exception, *alibi*, not instantly verified.

THE LORDS repelled the defence, but prejudice of reduction thereupon.

*Fol. Dic. v. 1. p. 171. Stair, v. 1. p. 132.*

No 33.  
Found in conformity with No 28, p. 2713, and No 31, p. 2714.

1712. June 18.

WILLIAM KER of Chatto *against* THE CREDITORS of SIR WILLIAM SCOT of Elieston.

ROBERT SCOT of Elieston, succeeding to the estate of Harden, on the death of his brother Sir William ; and being much pressed both by his relict and creditors ; he prevailed with William Ker of Chatto to engage cautioner for him in considerable sums ; for relief whereof, the said Robert Scot gave him a disposition to his whole heritable and moveable debts ; and Chatto pursuing some of the debtors, compearance is made for Scot of Wall, and other creditors to Sir William, who craved preference to these debts ; *imo*, Because they are creditors to Sir William the defunct, and Chatto is only creditor to Robert the apparent heir ; which is founded on the 24th act 1661 ; and the debts being originally due by Sir William, their debtor, and they having done diligence within three years of his disease, they were preferable to the creditors of the apparent heir.

No 34.  
Decided likewise in conformity with the above mentioned cases.