RENUNCIATION TO BE HEIR.

1604. *March.* ORMISTON *against* ORME.

No 1.
Notwithstanding of a decree on a charge to enter, the heir is still at liberty to renounce, when charged by other creditors.

IN an action betwixt one Ormiston and Orme, the LORDS found, That he that was pursued as heir, at the least lawfully charged to enter heir, might renounce to be heir, albeit he being pursued of before by another party were decerned as lawfully charged, not having renounced *debito tempore*, because that was only *in pœnam contumaciæ*; and, therefore, being pursued thereafter by another party, that decreet could not prove him heir, unless it were otherwise proved by the pursuer, that he had succeeded to the defunct in lands or heirship goods.

Fol. Dic. v. 2. p. 340. Haddington, MS. No 714.

*** A similar decision was pronounced 10th July 1630, Whitelaw against Lord Ruthven, No 58. p. 9707, *voce* PASSIVE TITLE.

1615. *June* 15. DONALD HEWTAM *against* ROBERT BAILLIE.
1620. *November* 30. ADAMSON *against* HAMILTON.

No 2.
Qualified renunciation.

IN an action of suspension betwixt Donald Hewtam and Robert Baillie, minor, *contra* whom decreet was recovered, as to enter heir to his goodsire, the LORDS received his renunciation by way of suspension, and also received his renunciation, with this limitation, "renounces all lands or successions pertaining to his goodsire, except those lands which are contained in his contract of marriage, and wherein his goodsire is obliged to infeft his father;" whereupon inhibition was used; because the LORDS found, that the contract with the inhibition preceding the debt, was *titulis singularis*. This also found betwixt Adamson and Hamilton, 30th November 1620.

In the said action, there being a decreet arbitral produced given betwixt the tutors taking burden of the minor on the one part, and his uncle, Alexander Baillie, on the other part, whereby all questions which Alexander Baillie might lay to the minor's charge, as heir to his father and goodsire, were submitted,