

No 15.

quia præsumptio cedit veritati; and where the defender condescended, that the father was a burghess of some royal burgh, the LORDS found not that relevant, because it was not alleged that he was an actual resident burghess, indweller within burgh, and using the exercise of a burghess by trade; which not being alleged, but only that he was *civis honorarius*, the LORDS found that made him not to be of such a quality, as that thereby he had an heir, who might be convened as heir, for intromitting with the best moveable goods pertaining to the defunct.—See PASSIVE TITLE.—PERSONAL and TRANSMISSIBLE.—PROOF.

Act. *Stuart & Gibson.*Alt. *Nicolson & Mowat.*Clerk, *Scot.**Fol. Dic. v. 1. p. 365. Durie, p. 349. & 383.*

* * Auchinleck reports the same case :

He behaves himself as heir who is infest in his father's lands, or any part thereof, *titulo lucrativo post contractum debitum*, or he who intromits with his father's heirship goods, or uplifts, after his father's decease, the farms and duties pertaining to his father.

Auchinleck, MS. p. 2.

* * Spottiswood also reports this case :

JAMES LESLIE having obtained a decret against Hugh Dunbar, as lawfully charged to enter heir to his father, and having charged thereupon, Dunbar suspended upon a renunciation produced by him, subscribed with consent of his curators.—*Alleged* by Leslie, He could not renounce, because he had intromitted with certain heirship moveable goods belonging to the father.—*Answered*, That his father was not such a person who could have an heir, being neither prelate, baron, nor burghess.—To which it was *replied*, That he offered to prove he was burghess of some burgh royal.—It was found by the LORDS, That it was not enough to be *civis honorarius* of any burgh, but that one behaved to be an actual trafficking merchant, otherwise he was not one of those persons comprehended under that maxim, whose heir might be burdened for intromission with any of the moveable heirship.

Spottiswood, p. 138.

1629. July 2.

A. against B.

No 16.

A PRELATE, baron, or burghess, may have an heir; but if one who had heritage was denuded of his heritage in his own time, and died not infest in lands, he can have no heir, which is an exception from the rule.

Fol. Dic. v. 1. p. 365. Auchinleck, MS. p. 3.