

said would appear to free the heir, albeit entered heir, from all pursuit from any debt, heritable or moveable before the year expire, and after the year gives the heir relief against the executor, even in moveable debts, which doth affect properly the heritage and the heir, and not the executors, for so will the words of the act import ; but I am of the mind that the LORDS have now these many years bypast been in use, to find process against the heir within the year, where he was entered before ; and it hath been so decided divers times, as is noted, 29th June 1624, Haliday *contra* Edgar, Durie, p. 131. See INDUCIÆ LEGALES.

Act. Foulis. Alt. ———. Clerk, Gibson.

Durie, p. 376.

No 2.

1629. November 25. DICKSON *against* KER.

AN adjudication, without a spécial charge, was sustained in a competition, though the debtor was not infest, he being served heir in special, and having also charged the superior to infest him. See No 1. p. 169.

Fol. Dic. v. 1. p. 131. Durie, p. 469.

No 3.

1635. November 13. DICKSON of Headrig *against* A DONATAR.

THE gift of ward and marriage being gifted and pursued for, by a donatar against ——— Dickson, apparent of Headrig, apparent heir to that prior first apparent heir of that umquhile deceased vassal, who died tenant to the King ; for the action was not pursued against the apparent heir of the vassal, in his own lifetime ; but the apparent heir, whose marriage was gifted, being deceased before any action was intended against him upon that gift, the action was intended against his brother, who was the next apparent heir upon that gift, for that first apparent heir's marriage, who was deceased, and whose marriage was gifted before he died, and not for the marriage of the defender, who was then apparent heir himself, in respect of the other's decease ; and after the intending of this pursuit, this other apparent heir, who was defender, being deceased since the intending of the cause, and the process being transferred in the next apparent heir, and after transferring being insisted upon against him, not for his own marriage, but for the marriage of the first apparent heir, as said is ; in this process, it being *alleged*, That the same could not be sustained against the apparent heir, either of the vassal, or of that apparent heir whose marriage was sought, except the defender were called, either as heir entered to that apparent heir, or as charged to enter heir to him ; for he *alleged*, That this action ought to be considered otherwise than if the vassal's apparent heir were pursued for his own marriage, in which case he being the apparent heir who was convened, it sufficeth ; but in this case, the apparent heir's marriage being craved after his decease, some ought to be called to represent him ; seeing it was craved as a debt

No 4.  
There is no necessity for a general charge to enter heir, in a process for the avail of marriage pursued against the ground. A charge is necessary only where it is meant to make the heir personally liable.

No 4.

of his, the pursuit whereof cannot be sustained, as when the apparent heir to the vassal deceased is convened for his own marriage; for in that case, he cannot be otherwise convened, seeing if he had been entered or infest before the other vassal's decease, his marriage would not have fallen; but now the apparant heir being dead unentered, and yet his marriage craved, the process cannot be sustained therefor against none, but some called to represent him, either as heir, or charged to enter heir; seeing the defender, who is convened as apparent heir, his own marriage is not craved, but the marriage of the other apparent heir deceased.—THE LORDS repelled this allegiance, and sustained the transferring, and process pursued thereupon, against the said apparent heir, without necessity that he should be either heir, or charged to enter heir to that apparent heir, whose marriage was sought; in respect that this pursuit was real against the ground, and that the pursuer sought no personal action, nor execution thereupon against the defender, but past therefrom. See PERSONAL and REAL.

Act. *Advocatus & Craig.*Alt. *Nicolson & Heriot.*Clerk. *Gibson.**Fol. Dic. v. I. p. 130. Durie, p. 778.*

1638. December 11. FINLASON against WEMYSS.

No 5.  
An order of redemption may be used against an apparent heir, without necessity of a charge to enter heir.

THE lands of ——— being wadset to Alexander Wemyss and Mr John Wemyss, under reversion; which reversion being comprised by Alexander Finlason, creditor to him who gave the wadset; whereupon order of redemption being used against the said unquhile Alexander Wemyss in his own lifetime; who deceasing before declarator, thereafter summons and declarator of redemption is raised against the eldest son, and apparent heir of the said unquhile Alexander Wemyss, upon the same order used against unquhile Alexander, before his decease; wherein the defender compearing, *alleged*, That this order could not be sustained and used against Alexander, who is now dead, to be declared against his apparent heir, against whom it was not used, but that he ought to be of new warned, and ought to be charged to enter heir to his father for that effect.—THE LORDS repelled this allegiance, and found, That the order used against the father, who was dead since the using thereof, might be lawfully craved to be declared against his apparent heir; and that there was no necessity of any new order to be used against him, or that he needed to be charged to enter heir, seeing redemptions might be used from apparent heirs. *Item*, The order being quarrelled, because it was not used conform to the order agreed upon, and prescribed in the reversion, which appointed premonition to be made at the parish church upon a Sunday before noon, in time of Divine service, and that the reversion should then there be read; and the other *replying*, That he had done more; for that clause being appointed only, that the party might be certiorate of the deducing of the order, he had made him more certain, by premonishing