

\*\*\* Spottiswood reports this case :

No 82.

In an action of registration pursued by N. Goodlet against John Adamson, as heir to his father, the pursuer produced to verify the defender to be heir, an act of court of the Bailies of St. Andrews, bearing, that, by sentence and ward of court, John Adamson was recognised to be heir to his father James, whereupon the said John's procurator asked instruments.—THE LORDS thought not this sufficient to prove one heir, thereby to infer any action against him.

*Spottiswood, (HEIRS.) p. 139.*

No 83.

1670. June 28.

ELIES *against* CARSE.

THE taking out brieves from the Chancery, in order to serve heir, was found not a behaviour, the same not having been followed out.

*Stair. Gosford.*

\*\*\* This case is No 27. p. 9668.

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SECT. XI.

Behaviour upon Act of Sederunt 1662.

No 84.

1662. January 22.

GLENDONWYNE *against* The EARL of NITHSDALE.

An apparent heir having granted a simulate bond, in order to lead an adjudication of his predecessor's estate, his intromission, by virtue of this title, was not reckoned a behaviour, being *singulari titulo*, and not as heir.

GEORGE GLENDINNING pursues the Earl of Nithsdale, as lawfully charged to enter heir to his father, for fulfilling his father's bond. It was *excepted*, That the Earl was content to renounce. It was *answered*, That he could not renounce; because he had given bond to the Earl of Dirleton, whereupon, to his own behoof, his father's estate was adjudged from him; to which adjudication the defender was assigned by Dirleton, and he thereupon infest, and in possession. It was *replied*, That the defender might nevertheless renounce; because nothing could hinder him but *gestio pro heredede*, or some other passive title, which, by the law of Scotland, could make him heir, or behaving himself as heir, &c. But so it is, that the granting of the foresaid bond is not such a passive title; but, on the contrary, implies a direct mind, that he intends not