1634. *February* 7. GILHAGIE *against* WARDROP.

No 7.
In conformity with Nisbet against Nisbet, *supra*.

ONE Gilhagie, for debt owing by umquhile ——— Wardrop, having obtained decreet against Wardrop's son, as lawfully charged to enter heir to him, and having arrested the mails and duties of his lands therefor, and having obtained sentence to make the same furthcoming, and also having comprised the said lands from the said son, as charged to enter heir to his said father, who was debtor, and thereupon being infeft, the tenants who were decerned to make the mails furthcoming, suspend, that they were distressed therefor by the creditor, and also by the son; who compearing, claimed the mails as due to him, who was infeft in the lands by hasp and stapple, as heir to his goodsir, and not to his father; likeas he renounced to be heir to his father; and the creditor opponing his sentence, comprising and infeftment, which he alleged could not be taken away this way without reduction, seeing his renouncing to be heir, might well hinder personal execution, but could not stay any real execution;—the LORDS found the son's allegeance relevant, that he renounced to be heir to his father, and that he was infeft as heir to his goodsire, and received the same in this place, by way of suspension, and double poinding, without necessity to reduce; seeing that renunciation to be heir was found sufficient to stay all execution both personal and real against the son, for all things which he bruiked, and pertained to him otherwise than as from his father, seeing it was never alleged by the creditor, that ever the father was infeft in the lands comprised.

Clerk, *Scot.*

Durie, p. 701.

1675. *June* 18. IRVING *against* ———.

No 8.
Has the heir renouncing any further interest in the proceedings?

FRANCIS IRVING having pursued , as representing his debtor upon a renunciation to be heir; the defender was assoilzied, and the pursuer obtained decreet *cognitionis causa*, and thereupon pursues an adjudication; at the calling of which summons by a clerk, the same was desired to be seen for the defender, who had renounced, and both applying to the Ordinary, he reported the case. The pursuer *alleged*, That albeit the defender was called in the adjudication, it was only *dicis causa* for form's sake; and the defender hath no more interest to compear, than when a citation is at the market-cross against all and sundry, *quilibet ex populo* pretending to be called thereby, should crave to see; which though it used not to be debated before the act of regulation, yet since, if the person renouncing shall be found to have interest to see and answer, and that the process must be enrolled, the pursuer will be postponed a long time, and others preferred, or the year may expire before his pro-

cess can be called by the roll. It was *answered*, That the defender, though renouncing to be heir, being called, could not be refused to see and answer, but might allege the renunciation was false. No 8.

THE LORDS ordained the defender to see in the clerk's hands for 48 hours, that if any special consideration could be represented, he might see, in common form; but otherwise, seeing he had renounced, he had no interest to stop the pursuer's diligence, and to get the process seen in common form, and returned and inrolled.

Stair, v. 2. p. 334.

*** Dirleton reports this case:

IN an adjudication, the apparent heir being called, and his advocates having compeared and desired to see the process; it was *alleged*, That he had no interest, having renounced, and that his compearing was only to retard the pursuer's diligence, that other creditors might come in. This point of form being reported, viz. Whether his procurators should see; and if they should see, whether *in communi forma* or not, or in the clerk's hands?

Some of the Lords were of the opinion, that being a person necessary to be called, and being called, his procurators should see *in communi forma*, the law making no distinction; and though he had renounced, yet he had interest to see and object, whether the pursuer's debt was the true debt, or satisfied; and if it appeared that it was satisfied, he may, notwithstanding his renunciation, enter, if he thought fit; and the renunciation may be questioned as false.

THE LORDS nevertheless found, That he should see only in the clerk's hands within 24 hours; though it was urged, that if the party were in town, that course might be taken; but the party being at the distance of 100 miles, or any other considerable distance, so that in so short a time the procurator could not get information, it were better that in such cases the processes should be seen *in communi forma*; for if parties had prejudice, they would apply again by bills, which would occasion greater trouble and delay.

Reporter, *Redford.*

Dirleton, No 270. p. 131.

Heir, before he renounce, must purge the estate of his proper debts; See PASSIVE TITLE.

See APPENDIX.