

and therefore before answer ordained the pursuers to produce the books of assumption, and the old rentals of the Abbacy, that it might appear whether this annuity was contained therein as a part of the benefice; for if possession at any time had been instructed, they would have sustained the instruction of the title of the kirk-benefice in a matter so ancient, where it is notour that most of the original evidents were lost; but they came not to determine the point of prescription, or whether the King had right to this annuity.

Stair, v. 2. p. 364.

No. 34.

1676. February 23.

The APPARENT HEIR OF GEORGE HERRIOT *against* His CREDITORS.

Several creditors of George Herriot having adjudged his tenements in Edinburgh, and pursuing for mails and duties, there is a reduction raised at the instance of the apparent heir, of the bonds whereupon these adjudications proceed, as being granted on death-bed, and of the adjudications in consequence. It was alleged for the adjudgers, no process in the reduction, because the apparent heir hath no interest till he enter heir. It was answered, That death-bed is a ground of reduction at the instance of personal creditors, that they may affect the defunct's estate, and was so sustained in the case of the creditors of Balmerino and Cowper *against* the Lady Cowper, No. 25. p. 3203; and much more ought it to be sustained at the instance of the apparent heir, because the creditors have only interest as they found upon the privilege of the apparent heir; and there are many cases in which an apparent heir may reduce, as when the deeds on death-bed impede their entry to be heirs; or as if tailzied lands be disposed on death-bed, and infestment follow thereon, the heir of tailzie cannot at all be served as heir of tailzie to the defunct in those lands wherein he died last vest and seised, as of fee, because he was disseized by the infestment on the disposition on death-bed, which therefore the apparent heir must remove, as an impediment to his entry.

The Lords sustained the reduction at the instance of the apparent heir, but granted to the adjudgers decret for mails and duties, because the event of the reduction was dubious.

Stair, v. 2. p. 420.

No. 35.

Competent for an apparent heir to reduce bonds granted by a defunct on death-bed, though there was no infestment thereon in the defunct's time, but an adjudication after his death.

1680. July.

LADY MARGARET CUNNINGHAM *against* LORD and LADY CARDROSS.

Process sustained at the instance of an apparent heir, not served, for declaring the lands he was to succeed to free of the predecessor's debts.—See APPENDIX.

No. 36.

* * This case is mentioned in No. 65. p. 13292. *voce* QUOD AB INITIO VITIOSUM.