

No 27.

heir, to have received the same simply, likeas he detained the same two years; and as to his ignorance, *ignorantia juris neminem excusat*, and the pursuer is in this also favourable, that this bond is a provision granted to Mr Richard's sister, and heir of line, and the Doctor, and this defender was but heir of tailzie of a further degree.

THE LORDS found the condescendence relevant conform to the receipt of the tenor foresaid, and the retention of the charter-chest without inventory so long; whereas it was moved amongst the LORDS, that they had often times refused vitious intromission against any representing the intromitter, unless sentence or pursuit had been against the intromitters in their own life, whether that should be extended to behaviour as heir, where there was no pursuit against the behaviour in his own life; but the behaviour being so considerable and universal, with all the evidents without inventory, it did not take with the LORDS, neither did the party plead it; but the LORDS did not find that the taking out of briefes, or the revocation imported behaviour.

*Stair, v. I. p. 686.*

1682. February 16.

LAIRD of COXTOUN against ADAM DUFF of Drummore.

No 28.

The reverse  
of No 26.  
p. 9668.

THE tutors of an apparent heir (whose predecessor died after expiring of the legal of an apprising against him) having intromitted with the charter-chest and writs, and received from the pupil after his majority a discharge of all their actings and intromissions; and he having continued in possession of these writs after he was major, he was pursued *ex eo capite*, as *passive* liable for his predecessor's debt.

*Alleged* for the defender; He could not be liable, because the writs being appraised before the defunct died, they belonged not to him but to the appriser; and the defender meddled with them only *custodiæ causa*, without disposing of any of them; and the discharge to the tutors was general, making no mention of papers.

*Answered* for the pursuer; If apparent heirs were allowed to put their hands amongst the defunct's writs, they might endanger the diligence of creditors, by abstracting and destroying evidents; and it is now a matter of three years since the defunct's decease.

THE LORDS sustained the said discharge, and continuation of possession of the writs, as a passive title against the defender; although formerly July 8th. 1628, Dunbar *contra* Leslie, No 26. p. 9668.; it was otherwise decided.

*Fol. Dic. v. 2. p. 29. Harcarse, (PASSIVE TITLES.) No 29. p. 7.*