

No 13.

* * * Fountainhall reports the same case :

1683. November 20.—M^r Brair of Netherwood *contra* Rome, was advised ; but not reported till next day. ‘ THE LORDS found, though the *bona* were *in hæreditate jacente*, yet the apparent heir’s intromission with the mails and duties behoved to be ascribed in payment *primo loco* of his goodsir’s debt, (who stood last vest, and seised in the lands,) and that he could not first ascribe it to pay his father’s debts who was never infest ; and that the creditors of him who was infest ought to be in a better case than those of him who was never infest ; but if there was any superplus, then they allowed it to be imputed in the next place for payment of his own or his father’s debts.’ But by this they extinguished a comprising led for his father’s debt, by which he sought to bruik the lands.

Fountainhall, v. I. p. 243.

* * * This case is also reported by Harcarse :

IN the reduction of an act, wherein the LORDS found, that unuplifted mails and duties were *in bonis* of the apparent heir, and might be confirmed in his testament, upon a review, they were very clear to alter the interlocutor, and to find, ‘ that all unuplifted mails and duties were *in hæreditate jacente*, and belonged to the heir served to the person dying last vest and seised in the lands.’ But the new debate proceeding *super iisdem deductis*, they were loth to rescind expressly that interlocutor, and contented themselves to explain and clog it thus, That in the competition of debts due by the defunct last infest, and the debts of the apparent heir, the mails and duties should be liable, *primo loco*, to satisfy the former ; which explanation served the pursuer’s turn for extinguishing an apprising led upon debts by the defunct last infest.

Harcarse, (HEIR.) No 44. p. 10.

1685. *March* LAIRD OF WEDDERBURN *against* LONGFORMACUS.

No 14.
Found t^ha:
an apparent
heir might
pursue for
teind-duties,
of which his
predecessor
died in pos-
session.

THE LORDS found an apparent heir might pursue for teind duties, whereof his predecessor died in possession, seeing the decret will secure the payment. But this seems to be an erroneous decision, and a consequence of the decisions finding current mails and duties to belong to apparent heirs, and to fall under their testaments ; which decisions are irregular, as Castlehill observes, Pract. tit. AIRES, No 81. For though tenants paying their rents to an apparent, are excused, the apparent heir, not being *nomen juris*, should have nothing but his aliment, and cannot transmit any rents to his executors ; and in a competition, the next heir will be preferred to the former’s creditors, not being creditors for

his aliment. And the question in the Lady Tarsappie's case, *anno* 1662, No 9. p. 5206. was only about satisfaction to her for the apparent heir's aliment, whom she entertained till his death; and it was expressly found, That unuplifted mails and duties did not fall under an apparent heir's executry, but were *in hæreditate jacente*, and belonged to the person served heir to the defunct last vest and seized; Jan. 1683, Ballantyne *contra* Bonnar's relict*; and in Balgony's case, February 1688, No 15, *infra*.

Fol. Dic. v. 1. p. 358. Harcarse, (AIRES GESTIO, &c.) No 60. p. 11.

No 14.

1688. February. BALGONY *against* JAMES HAY.

FOUND that the executors or assignees of apparent heirs dying un-entered, had no right to mails and duties of lands, or to annualrent of heritable bonds, resting unuplifted the time of the apparent heir's decease; though payment made to apparent heirs would exoner tenants: And it was not material here to consider, if the apparent heir's executors would be liable to restore what was consumed of that which he uplifted.

Fol. Dic. v. 1. p. 358. Harcarse, (AIRES GESTIO, &c.) No 71. p. 13.

No 15.

1733. February 28. BLAIR *against* STEWART.

THE privilege competent to apparent heirs by act 1695, to sell the predecessor's estate at a public roup, found competent notwithstanding the pursuer had behaved as heir, and become thereby liable to all the debts of his predecessors. See APPENDIX.

Fol. Dic. v. 1. p. 359.

No 16.

1743. July.

EXECUTORS *qua* nearest of kin to DOUGAL CAMPBELL, *against* ALEXANDER CAMPBELL of Skirven.

ANNO 1728, Dougal Campbell of Skirven, by his bond of tailzie, obliged himself to resign his estate in favour of Archibald Campbell in liferent, and to Dougal the eldest son of Archibald, &c.; which failing, to Alexander Campbell.

Anno 1737, by another bond of tailzie, the said Archibald obliged himself to resign the estate to himself in liferent, and to Dougal his son, &c.; which failing, to the said Alexander Campbell.

After the death of Dougal Campbell elder, and Archibald his son, the estate

No 17.
The rents of an entailed estate fallen due, but unuplifted at the death of a substitute, were found to belong to the executors of his son, who died ap-

* Examine General List of Names.