

HEIR CUM BENEFICIO.

1699. July 31. JOHN DICK against Sir JOHN ERSKINE.

JOHN DICK, as a creditor to Sir Charles Erskine, pursues Sir John, as heir to his father, for payment.

The defender *alleged*; He was heir *cum beneficio inventarii*, conform to the 24th act, Parl. 1695.

It was *answered*; The act provides the benefit of inventory to heirs entering *inter annum deliberandi*; whereas the defender's father was dead several years before the act.

It was *replied*; The act bears, that for hereafter any apparent heir shall have access to enter by an inventory, allowing still to the apparent heir year and day to deliberate, in which time he may make his inventory; which year and day to deliberate must be understood year and day from the date of the act, where the heir's predecessor was dead before; because the privilege is given to every heir, and the year to deliberate is also competent to all, which falls in with the *annus deliberandi*, known in law, to such as should become apparent heirs thereafter; but, seeing the act was not limited to such as should become apparent heirs thereafter, and extended to all, the defender has the benefit of it.

THE LORDS found the defender had *beneficium inventarii*.

Fol. Dic. v. 1. p 361. Dalrymple, No 16. p. 19.

1704. February 8. BRUCE of Earlshall against The EARL of SOUTHESK.

ANDREW BRUCE of Earlshall died last vest and seised in these lands, about eight years ago, leaving Andrew Bruce his eldest son, and Mr Robert his second. Andrew having died in April 1703, unentered, Mr Robert raises brieves in January 1704, to serve himself heir to his father. Compearance is made for the Earl of Southesk and other creditors, to stop the service; and on application to the Lords, they name two of their number to be assessors to the macers; and

No 1.

The benefit of inventory found competent to every one who was in the state of apparen- cy when the act was passed.

No 2.

An heritor was succeeded by his eldest son, who survived him seven years, and died unentered. After the death of this appa-