only be extended to any present right Robert had to the estate of Lamingtoun, but to no future right or hope of succession; seeing there is no mention either of tailzie or succession in the contract. It was *alleged* absolvitor; because Robert getting 600 merks yearly, he can instruct no cause for it but this renunciation, which must necessarily be so interpreted as to have effect; and so if it extend not to exclude him from the tailzie, it had neither a cause for granting the 600 merks, nor any effect thereon. It was *answered*, That Robert being a son of the family, and renouncing his portion-natural, it was a sufficient cause; and, though there were no cause, such general renunciations could never be extended to future rights or hopes of succession, unless the same had been expressed. No 27.

Which the LORDS found relevant, and declared accordingly.

Fol. Dic. v. 1. *p.* 344. *Stair, v.* 1. *p.* 766.

1724. *July* 7.

Sir JOHN SINCLAIR of Stevenson, *against* The EXECUTORS of William Barnsfather.

No 28.
A general discharge of a factor's accompt was found not to comprehend a sum received, for which he himself granted receipt, obliging himself to pay it to his constituent, and procure his discharge of the debt.

SIR JOHN pursued these executors for payment of L. 824 Scots and annualrents thereof, contained in a bond by Andrew Gray to Sir John in the year 1697; which sum, Gray had paid to Barnsfather *anno* 1698, and taken his receipt or discharge, wherein Barnsfather obliged himself to procure Sir John's discharge.

It was *pleaded* in defence, That it was to be presumed Barnsfather had accounted to Sir John for that money, or paid it in to him, he being then his father Sir Robert's servant, and employed by Sir John both in getting in and giving out money, and he was for many years thereafter Sir John's factor, and accounted almost annually with him; that in his last fitted accompt, Sir John discharged him of his intromissions with his rents, and of all other intromissions whatsoever preceding the date; and that Barnsfather reckoned himself noway debtor to Sir John, was to be presumed from his leaving a legacy of 2000 merks to one of Sir John's sons.

It was *answered*, That it did not appear that Sir John employed Barnsfather sooner than the year 1710, when he appointed him his factor; that the receipt puts the Representatives of Barnsfather under an obligation to account and pay the same to Sir John; that the general clause in his factor-accompts, discharging all other intromissions, can only regard intromissions of the same nature with rents, and could not extend to extraneous intromissions with large sums of money, such as this pursued for. And as to the argument from the legacy, it was *answered*, That it could be of no weight in the present question; for Barnsfather died rich and without children, and he had made the bulk of his

No. 28. money under Sir John and his father, from whom he possessed a lucrative farm.

THE LORDS found, That the general discharge at the foot of the accompt, of charge and discharge, betwixt the pursuer and the deceased William Barnsfather, did not comprehend the sums in the bond discharged by the said William Barnsfather.

Act. *Arch. Hamilton, sen.* Alt. *Ja. Graham, sen. & And. Macdowal.* Clerk, *Dalrymple.*
Fol. Dic. v. 3. p. 250. Edgar, p. 72.

SECT. VIII.

If presumed to comprehend legal provisions and undelivered bonds of provision.

1672. *July* 13. CHISHOLM *against* CHISHOLMS.

No 29.
A father granted bond of provision to his younger children, whereby he obliged himself and his heirs to pay them, but declared his executors should not be burdened; he declared also, that the provisions "shall be in full satisfaction to the bairns of all portion natural, and bairns-part of gear, that they can claim from his heirs and successors." The father having died without testament, it was found, that seeing this clause did not bear

UMQUHILE Thomas Chisholm of Hairhope having given a bond of provision to his younger children, beside his heir, whereby he obliges himself and his heir to pay them; but declares that his executors shall noways be burdened therewith; and declares also that these provisions shall be in full satisfaction to the bairns of all portion natural, and bairns part of gear that they can claim from his heirs and successors; and having died without making testament, this bond of provision being found by the mother in the father's pocket, the children pursue exhibition thereof; in which the mother having deponed that she found the bond in her husband's pocket after his death, the same was decerned to be exhibited and delivered, albeit it was never delivered to the children, seeing their father's custody was their custody; albeit it was offered to be proven that the father did declare that he intended not to burden his estate with his bairns. The bairns now pursue their brother the heir for payment, who *alleged* that he could not be liable for payment, unless the pursuers would assign him to their portion natural, and bairns-part, and all that they could claim from his father's heirs or successors, seeing this sum was granted to them expressly in satisfaction thereof, and therefore behoved to come in place of the same; and it was against reason, and the intention of the defunct, to give these children any more than these portions, which were very great; and if they should obtain both the portions and executry, the heir offered to confer and communicate the lands with them, that all might come in proportionably, both in lands and moveables. The pursuers *answered*, That there was nothing in the bond of provision, directly nor indirectly obliging them to assign their bairns-part to the heir, neither