

No 21. decease, and that the heir-male was bound to relieve the heir of line of all debts; yet, because the heir of line was not actually denuded of the subject condescended on, it was found, that the creditor was bound to discuss the heir of line, and affect that subject.

As to the *second*; Behaviour as heir in general, is not relevant, without condescending on the qualifications from which behaviour may be inferred. *2do*, *Esto*, the pursuer should condescend on relevant qualifications to infer behaviour as heir-male, yet the order of discussing is still competent; because behaviour as heir-male cannot be further extended than a service as heir male, which yet affords the defence of order of discussing. *3tio*, The like is to be said as to the passive title founded on the act of Parliament 1695; and neither of them are like vitious intromission, because an executor confirmed is liable immediately without any order of discussing; therefore a vitious intromitter is liable in the same way; but heirs are only liable in their order.

'THE LORDS found the defender had the benefit of the order of discussing, notwithstanding of what was alleged, upon the defender's granting a bond of relief; and found the allegiance upon the passive titles of behaviour as heir, and the act of Parliament 1695, not relevant to exclude the defender from that benefit.'

[*Fol. Dic. v. 1. p. 247. Dalrymple, No 145, p. 199.*]

SECT. V.

Real burdens follow the heir who succeeds to the lands burdened.

No 22.

Though an heir of conquest or tailzie must first be discussed with respect to debts affecting the conquest or tailzied lands; yet, if the debt exceed the worth thereof, the heir general must first be discussed *pro reliquo*.

1607. June 18.

EARL OF KINGHORN *against* LESLIE.

THE Earl of Kinghorn pursued the general heir and heir of conquest of umquhile Mr William Leslie of Warthill, to hear and see a decret of violent profits obtained by him against the said Mr William, as cautioner in a removing for John Arbuthnot of Lintuch, transferred in the said heirs. It was *alleged* for the heir of provision; that it could not be transferred in him, at least could have no execution against him, till first the general heir was discussed, in respect of the daily practice, and *alleged* the decision betwixt Durie and Rosyth, and diverse others. It was *answered* by the general heir; that the decret behoved to have execution against the heir of provision, because the said umquhile Mr William having in his own time comprised the said John Arbuthnot's lands for his relief of the said cautionary, and his heir of conquest and provision having succeeded to the said lands, he behoved to bear the burden of the said

decreet of violent profits, and execution to follow thereupon, and *alleged* the practic betwixt William Hamilton burges of Edinburgh, and the Lady Samuelston, and Archibald Hamilton her son. THE LORDS found, that the heir of conquest should first be discussed *in quantum sufficebat valor terrarum appretiatarum*, and if these were all exhausted, that he should be no farther discussed *nisi in subsidium* of the general heir, who should be first discussed for all the rest of the decreet.

No 22.

Fol. Dic. v. 3. p. 247. Haddington, MS. No 1363.

1611. February 19.

FAIRLIE *against* HEIRS OF BLAIR.

No 23.

BURDENS lying upon tailzied lands, and bonds to infest men in the property thereof, or annualrents furth thereof, should be borne by the heir of tailzie succeeding to these lands.

Fol. Dic. v. 1. p. 247. Haddington.

* * See this case, No 83, p. 2746.

1615. June 23.

GORDON *against* M'DOWAL.

No 24.

IN an action betwixt Hugh Gordon of Grange and Fergus M'Dowal, THE LORDS found an execution proper against Grange as heir of conquest, without discussing the heir of line, because the contract was made upon the lands that pertained to the heir of conquest.

Fol. Dic. v. 1. p. 247. Kerse, MS. p. 138.

S E C T. VI.

What understood sufficient discussion.

1608. November. HUME of Renton *against* L. of RESTALRIG.

No 25.

ALEXANDER HUME of Renton pursued the heirs and executors of the umquhile Laird Restalrig, for the translation of a decreet obtained by him against Restalrig. It was *alleged* by the executors, that no process should be granted against them, till the defunct's heirs were first discussed, who had right by the

A defunct's creditor having discussed the heir general to the length of horning, he is