

No 23.

therford, merchant in London, as son and apparent heir of Robert Rutherford, brought a sale, as apparent heir to his father, of certain tenements in Edinburgh; and it being *objected* by the creditors, that the pursuer was heir served *cum beneficio*, and not apparent heir to his father, and so could not carry on the sale on the act 1695, the LORDS found, "That notwithstanding the pursuer was served heir in general *cum beneficio* to his father, yet it was competent to him to carry on the sale on the act of Parliament 1695."

The record of both which proceedings being produced in Court, the LORDS "Granted the diligence."

The greatest justice the heir can do to the creditors is to bring the estate to a judicial sale; and in Holland, where the entry of heirs *cum beneficio* is most frequent, the heir not only may, but must expose all the subjects of the inventory to public auction. Voet *ad Tit. De jure delib.* § 21.

*Fol. Dic. v. 3. p. 262. Kilkerran, (HEIR CUM BENEFICIO.) No 7. p. 241.*

No 24.

1752. July 21.

ROBERTSON, Petitioner.

ARTHUR ROBERTSON, apparent heir of William Robertson of Inches, represented to the Lords by petition, that he was resolved to deliberate, whether or not he would enter heir to his father, and craved that the Lords would ordain the Sheriff-depute of Inverness to inventory the writings, and transmit them to any of the Clerks of Session.

THE LORDS "refused this petition," as a novelty; every heir might ask the same thing, and every private party might ask the like, nor are the Clerks of Court bound to receive papers but in processes: Next, it would require an expense; and, Who was to pay it, if the petitioner should not enter?

*Fol. Dic. v. 3. p. 260. Kilkerran, (HEIR CUM BENEFICIO.) No 8. p. 242.*

1789. January 15.

JOHN SYME *against* DOUGLAS, HERON, and COMPANY.

No 25.

It is competent to prove resting owing by the oath of an heir served upon inventory.

GENERAL GORDON of Kingsgrange employed Mr John Syme, writer to the signet, as his agent. After the General's death, his heir made up titles *cum beneficio inventarii* to these lands, which were sold judicially.

In the ranking of the creditors, Mr Syme claimed a considerable sum for business done by him for General Gordon. As, however, before any demand was made, more than three years had elapsed from the date of the last article of his account, Mr Syme offered to prove, by the oath of the heir, that the whole was still *resting owing*.

Douglas, Heron, and Company, who were creditors to General Gordon, objected to this claim. And