RENUNCIATION TO BE HEIR.

1604. *March.* ORMISTON *against* ORME.

No 1.
Notwithstanding of a decree on a charge to enter, the heir is still at liberty to renounce, when charged by other creditors.

IN an action betwixt one Ormiston and Orme, the LORDS found, That he that was pursued as heir, at the least lawfully charged to enter heir, might renounce to be heir, albeit he being pursued of before by another party were decerned as lawfully charged, not having renounced *debito tempore*, because that was only *in pœnam contumaciæ*; and, therefore, being pursued thereafter by another party, that decreet could not prove him heir, unless it were otherwise proved by the pursuer, that he had succeeded to the defunct in lands or heirship goods.

Fol. Dic. v. 2. p. 340. Haddington, MS. No 714.

*** A similar decision was pronounced 10th July 1630, Whitelaw against Lord Ruthven, No 58. p. 9707, *voce* PASSIVE TITLE.

1615. *June* 15. DONALD HEWTAM *against* ROBERT BAILLIE.
1620. *November* 30. ADAMSON *against* HAMILTON.

No 2.
Qualified renunciation.

IN an action of suspension betwixt Donald Hewtam and Robert Baillie, minor, *contra* whom decreet was recovered, as to enter heir to his goodsire, the LORDS received his renunciation by way of suspension, and also received his renunciation, with this limitation, "renounces all lands or successions pertaining to his goodsire, except those lands which are contained in his contract of marriage, and wherein his goodsire is obliged to infeft his father;" whereupon inhibition was used; because the LORDS found, that the contract with the inhibition preceding the debt, was *titulis singularis*. This also found betwixt Adamson and Hamilton, 30th November 1620.

In the said action, there being a decreet arbitral produced given betwixt the tutors taking burden of the minor on the one part, and his uncle, Alexander Baillie, on the other part, whereby all questions which Alexander Baillie might lay to the minor's charge, as heir to his father and goodsire, were submitted,

No 2. and a discharge thereof, ordered to be given to the minor, the LORDS found, that the said decreet could not hinder him to renounce to be heir, quia non se gessit pro hærede; for these arguments; *imo*, The minor submitted, he not being past 21 years of age, and being able to subscribe, but only the tutors taking burden upon them to him; 2*do*, A discharge given to him of all things that may be laid to his charge, as heir, non inducunt agnitionem quia sunt verba suspensive et dubitative prolata et sic non probant voluntatem agnoscendi hæreditatem, per legem gentium D. De acqu. hæreditate; 3*tio*, It must be an express act circa ipsam hæreditatem, as was decided betwixt Munro and Graham, that the discharge might stand, in respect the minor renounced not purely and simply, but with exception of the lands contained in the contract of marriage, and so he is capable of a discharge of all actions preceding the contract.

Fol. Dic. v. 2. *p.* 340. *Kerse, MS. fol.* 138.

1626. *July* 20. HARVIE *against* BARON.

No 3. A DECREE being recovered against a party as lawfully charged to enter heir, he, in a reduction of the said decree, though 16 years after it was pronounced, was allowed still to renounce, the renunciation being offered *rebus integris*; but this only to the effect to take away all personal execution against the reducer, but nowise to stop any real execution against lands, &c. which the said reducer could claim by his predecessor; and the reducer also in this case to pay a sum modified by the LORDS for the party's charges, he having debursed the same necessarily by the reducer's fault.

Fol. Dic. v. 2. *p.* 330. *Durie.*

*** This case is No 173. p. 9038. *voce* MINOR.

1627. *January* 23. LA. OGILVIE *against* LO. OGILVIE.

No 4.
Found, not competent to an heir charged, to renounce, with the exception of lands provided to him, in his mother's contract of marriage. He must renounce simply or run his hazard.

IN an action of registration, at the instance of the Lady Ogilvie against the Lord Ogilvie, who was convened as lawfully charged to enter heir to his father, and for purging whereof he produced a renunciation, whereby he renounced to be heir to him, with an exception therein insert viz. that because his umquhile father was obliged, in the contract of marriage made betwixt him and his said father, and the Earl of Melross and his daughter, now spouse to the defender, to infeft the said defender and his heirs, in the lands mentioned in that contract, and whereupon he had served inhibition, which contract and inhibition preceded this contract, now desired to be registered, and so that