

apparent heir, executed a deed, conveying the whole subjects to trustees, with powers to manage them, and also to sell what part was necessary for discharging the debts.

David Blair afterwards made up inventories with a view of entering heir *cum beneficio*, in virtue of the act 1695, chap. 24. His trustees also let a part of the lands, and for several years uplifted the rents; and they likewise sold some small parcels of land; but the sales were afterwards given up, the trustees not being in a situation to grant the necessary conveyances.

At last, after an interval of ten years, a process of ranking and sale was brought by the creditors, and David Blair claimed a considerable sum as due to him; when an objection was stated, that, in consequence of the proceedings already mentioned, he had become liable *gestione pro herede* for the debts of his predecessors; and therefore could not be allowed to enter into a competition with their creditors.

The question having been reported on informations, the Court were unanimously of opinion, that as, in those proceedings, David Blair had no view of appropriating the subjects, his purpose being that of discharging the debts due by his predecessors, no passive title had been incurred.

THE LORDS, therefore, "repelled the objection to the claim entered for David Blair, and remitted the cause to the Lord Ordinary."

Reporter, Lord Henderland. Act. Dean of Faculty. / Alt. Solicitor-General.
Clerk, Mitchelson.

C. Fol. Dic. v. 4. p. 42. Fac. Col. No 178. p. 361.

No 76.
with a view
of preserving
the effects,
no passive
title is incur-
red.

SECT. IX.

Apparent Heir paying his predecessor's Debts.

1628. January 26. COMMISSARY of DUNKELD against ABERCROMBY.

The voluntary payment of the father's debts makes not the payer to be heir.

Fol. Dic. v. 2. p. 32. Auchinleck, MS. p. 2.

No 77.

* * Durie's report of this case is No 38. p. 3502. voce DILIGENCE.