

and to his heritage; *et quem sequuntur commoda, debent etiam sequi incommoda, et quemque in suo genere*. But this point was not decided; nor yet if the executor will get restitution thereof from the heir, the executor having paid the creditor that heritable debt.

*Act.* Nicolson and Falconer. *Alt.* Stuart. Gibson, Clerk. *Vid.* 7th March 1629, betwixt thir parties.

Page 423.

1629. February 11. STUART *against* WILSON.

IN a sentence obtained against one as heir to his predecessor, for payment of a sum of money, wherein his predecessor was debtor, for the price of a tenement sold by the obtainer of the sentence to the father of that defender, who, as heir to his father, was decerned to pay the sum; and the same defender, upon the same contract of alienation thereafter, intending action of warrandice of that tenement, as heir to his father, against the said party, seller of the land; in which pursuit, having produced the foresaid sentence given against him as heir, to verify and instruct his title and interest, *viz.* that he was heir;—the Lords found the same not to instruct him to be heir, but that he should otherwise instruct the same than by the said decreet; albeit he alleged, that, seeing the defender had recovered sentence against him as heir upon the same contract, that sentence should work betwixt thir parties themselves, to make them heirs *hinc inde* in the dispute to be moved betwixt them upon this contract, *pro et contra*. Which was not respected; but it was found he should prove it otherwise, seeing that will not prove *activè* which proves *passivè*.

Page 423.

1629. February 17. ENGLIS *against* LADY DUMFERMLING.

IN an action, letters conform being sought by Alexander Inglis, to two pensions granted to him by the umquhile Earl of Dumfermling, *against* his lady relict, and liferentrix of the lands out of which the pension was granted, the duties whereof were assigned to him *pro tanto* for payment, and *against* the Earl his son, and *against* the possessors of the lands, and all others having interest;—the pursuit was sustained: albeit the defenders alleged that no such general letters ought to be sustained, in respect of 140 Act, 12 Parliament, James VI, which prohibits all such general letters; and whereby it is provided also, that letters conform, and general letters, are only ordained to be granted to the benefited person, or any having right flowing from him; and that the same then serves only for an intimation, and not to be a warrant to denounce any party to the horn; and whereby such letters of horning, if any were, should be null. Which allegiance was repelled; seeing, if horning were used contrary to the tenor of the Act of Parliament, it was then time to the parties interested to quarrel the same.

*Act.* Belshes. *Alt.* Stuart. Gibson, Clerk.

Page 427.