

tioner in this debt for one Nisbet, and that he bruiked the estate by singular titles, viz. a disposition both to the lands and moveables prior to the contracting of this debt, to which he ascribes his intromission and meddling with the charter-chest. *Answered*, This can never purge his vitious intromission, because, before he opened his father's charter-chest, and meddled with his papers, he ought to have obtained the warrant of a Judge, to have inventoried the same, as the Lords found in the case of Innes of Coxton and Duff of Drummore, No 28. p. 9670. *2da*, He has disposed of the visible heirship, which is expressed and contained in none of his dispositions, and so he must be still *passive* liable, especially seeing he possesses 5 or 6,000 merks by year by his father, the debtor in this bond. *Replied*, Where a son has the whole heritage disposed to him, he needs seek no warrant to open the charter-chest, and intromit with the evidents of the lands disposed, as was decided in the case of Urquhart against Sharp, No 31. p. 9673. And as to the second of the heirship, he had two dispositions, one of the heritage, and another of the executry; and certainly it behoved to be carried and comprehended under one of the two, though not *per expressum* and *nominatim* disposed. THE LORDS waved the first anent the charter-chest, as not so clear, and laid hold upon the second anent the moveable heirship; and found it was a separate subject, and not expressly conveyed, and therefore his intromission therewith made him liable *passive*. Some doubted if this would hold, where the debt exhausted both the moveable heirship and the rest of the executry; but others thought, even in that case, his intromission was unwarrantable.

No 47.  
moveables,  
which were  
not expressly  
conveyed.  
The Lords  
found, that  
this intromis-  
sion made him  
liable *passive*.

*Ed. Dic. v. 2. p. 30. Fountainball, v. 2. p. 376.*

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S E C T. VII

An apparent heir discharging or renouncing any right competent to him.

1636. February 24. L. MEIDHOPE against SIR ROBERT HEPBURN'S SONS.

THE general heir of unquhile Sir Robert Hepburn, and the heir of the second marriage, being both convened for payment of a debt owing by their unquhile father to the goodman of Meidhope; and the general heir offering to renounce, the heir of provision *answering*, That he could not, seeing he had behaved himself as heir to him, in so far as he had granted to his father a discharge of all heirship goods and gear which might befall to him, and which he

No 48.  
A presump-  
tive heir re-  
nouncing in  
his father's  
favour, his  
interest in the  
heirship  
moveables  
will not im-  
post behavi-

## No 48.

our, though  
he may have  
got a va-  
luable consi-  
deration for  
doing so.

might crave through his father's decease, at any time thereafter; and that in respect he had then delivered to him certain moveables and plenishing for his house, he being then to withdraw himself from his father, to his own dwelling a-part after his marriage, accomplished by the advice of his father, whereof albeit the discharge was granted to the father in his own lifetime, yet being given for satisfaction, and for moveables received in place of his heirship, whereto he might succeed, it behoved to be repute as if he had received and intromitted therewith after his father's decease; this allegiance was repelled, and the discharge given by the eldest son to his father, in his father's lifetime, discharging his father of his heirship, albeit done upon, and for receipt of other moveables, was found ought not to make the eldest son liable to his father's debts as heir, he renouncing now to be heir, which the said discharge was found to make no impediment to him, but he might renounce, albeit he offered not to restore, and make forthcoming to the creditors, the particulars received by him from his father, nor the avails thereof.

Act. *Heriot et Stuartt.*Alt. *Nicolson et Nairn.*Clerk, *Hay.*Fol. *Dic. v. 2. p. 31. Durie, p. 797.*

1642. February 10.

JOHNSTON against JOHNSTON.

## No 49.

An apparent  
heir having  
ratified an  
apprising led  
against his  
predecessor,  
and renounc-  
ed the benefit  
of the legal,  
this was  
found a beha-  
viour.

ONE Johnston convening Johnston the apparent heir to his debtor, as lawfully charged to enter heir to him, for payment of his father's debts; and, the defender renouncing to be heir; the LORDS found, that he could not renounce in respect of this reply, which the LORDS found relevant, viz. that the pursuer offered to prove, that the said defender had bought the defender's father's lands from a compriser, who had sold the said lands and his right of comprising to the Lord Johnston; to which disposition the defender consented, and had received for his consent to the said heritable disposition thereof 10 or 12,000 merks, whereby *res non erant integræ* for him to renounce; especially seeing the time of the said disposition, the comprising was not expired, but the right of reversion was competent to him, which the LORDS admitted to the pursuer's probation in this process. Also, the LORDS sustained another process at this same pursuer's instance against the Lord Johnston, for making arrested goods forthcoming, notwithstanding that this debt was not decerned against the principal party, but was depending *ut supra*; and found, that this pursuit, to make arrested goods forthcoming, might be intended, albeit the said principal cause was not declared *ut supra*; but found, that the said process of arrested goods could not be prosecuted, but should lie over, while the principal cause for the principal debt were first discussed.

Act. ———.

Alt. *Johnston.*Clerk, *Hay.*Fol. *Dic. v. 2. p. 31. Durie, p. 891.*