

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.*