No 26.

was a right of apparency, yet they could not be specially served nor infeft as heirs to Janet; neither could they be specially served heirs to Robert, who was never infeft, and had only right by a bond of provision; and therefore, it seems the renunciation behoved to be granted by the heir and eldest son of the father, who could only be specially infeft in that annualrent. But this was reserved to be considered as said is. Thereafter, in this process, compearance was made for Margaret, another sister who survived Robert, and craved the benefit of the substitution for her part and proportion. It was *alleged* for the tutrix and the heir, That she could have no part; because, by her contract of marriage, she discharged all that she could crave by the decease of her father, and particularly all bonds of provision made to her, which must comprehend this bond of provision granted to Robert, to which she was provided by a substitution, failing of him and his heirs. THE LORDS repelled the defence, and sustained her interest, notwithstanding that the discharge in the contract of marriage was so general; because she having other bonds of provision made to herself, and the time of the discharge, nor 15 years thereafter, she having no right in her person by virtue of the substitution but a naked right of apparency *de quo non fuit cogitatum*, there being no mention thereof, or any assignation thereto, in case the right should fall to her by the death of Robert; and the discharge itself being granted only to the tutrix for her security, who could noways be liable to compt for that sum by virtue of the substitution; they found that it could not be included in the discharge of all bonds of provision.

Fol. Dic. v. 1. *p.* 343. *Gosford, MS. No* 234. *p.* 94.

No 27.

Renunciation of "all right and interest," found to extend only to all right the renouncer had, and not to any right he might succeed to.

1671. *July* 27. ROBERT BAILLIE *against* WILLIAM BAILLIE.

THE Laird of Lamingtoun having made a tailzie of his estate, wherein William Baillie, eldest son to his deceased eldest son, is in the first place, and to him is substituted Robert Baillie, Lamingtoun's second son, and the heirs of his body, reserving to the said Robert his liferent, from the fee of his heirs, in case they succeed; and, failing of Robert's heirs, to Mr William Baillie, Lamingtoun's brother's son; after Lamingtoun's death, there is a contract betwixt this Lamingtoun and Mr William Baillie on the one part, and Robert on the other, by which, Lamingtoun obliges himself to pay to Robert the sum of 600 merks during his life, and Robert renounces and dispones to Lamingtoun his portion-natural and bairns part of gear, and all bonds and provisions made to him by his father, and all right he has to the estate of Lamingtoun, or any part thereof, and that in favours of this Lamingtoun, and his good-sire's heirs-male, contained in his procuratory of resignation. Robert Baillie raises a declarator against Lamingtoun and Mr William Baillie, for declaring that this contract could not be extended to exclude him or his heirs from the right of tailzie in the estate of Lamingtoun, failing of this Laird and his heirs; and that it could

only be extended to any present right Robert had to the estate of Lamingtoun, but to no future right or hope of succession; seeing there is no mention either of tailzie or succession in the contract. It was *alleged* absolvitor; because Robert getting 600 merks yearly, he can instruct no cause for it but this renunciation, which must necessarily be so interpreted as to have effect; and so if it extend not to exclude him from the tailzie, it had neither a cause for granting the 600 merks, nor any effect thereon. It was *answered*, That Robert being a son of the family, and renouncing his portion-natural, it was a sufficient cause; and, though there were no cause, such general renunciations could never be extended to future rights or hopes of succession, unless the same had been expressed. No 27.

Which the LORDS found relevant, and declared accordingly.

Fol. Dic. v. 1. *p.* 344. *Stair, v.* 1. *p.* 766.

1724. *July* 7.

Sir JOHN SINCLAIR of Stevenson, *against* The EXECUTORS of William Barnsfather.

No 28.
A general discharge of a factor's accompt was found not to comprehend a sum received, for which he himself granted receipt, obliging himself to pay it to his constituent, and procure his discharge of the debt.

SIR JOHN pursued these executors for payment of L. 824 Scots and annualrents thereof, contained in a bond by Andrew Gray to Sir John in the year 1697; which sum, Gray had paid to Barnsfather *anno* 1698, and taken his receipt or discharge, wherein Barnsfather obliged himself to procure Sir John's discharge.

It was *pleaded* in defence, That it was to be presumed Barnsfather had accounted to Sir John for that money, or paid it in to him, he being then his father Sir Robert's servant, and employed by Sir John both in getting in and giving out money, and he was for many years thereafter Sir John's factor, and accounted almost annually with him; that in his last fitted accompt, Sir John discharged him of his intromissions with his rents, and of all other intromissions whatsoever preceding the date; and that Barnsfather reckoned himself noway debtor to Sir John, was to be presumed from his leaving a legacy of 2000 merks to one of Sir John's sons.

It was *answered*, That it did not appear that Sir John employed Barnsfather sooner than the year 1710, when he appointed him his factor; that the receipt puts the Representatives of Barnsfather under an obligation to account and pay the same to Sir John; that the general clause in his factor-accompts, discharging all other intromissions, can only regard intromissions of the same nature with rents, and could not extend to extraneous intromissions with large sums of money, such as this pursued for. And as to the argument from the legacy, it was *answered*, That it could be of no weight in the present question; for Barnsfather died rich and without children, and he had made the bulk of his