

\* \* \* Stair reports this case.

No 86.

In a process betwixt Jeffray and Murray, the defender being pursued as lawfully charged to enter heir for a defunct's debt, offered to renounce; the pursuer *answered*, That a renunciation is not relevant, unless it were made *re integra*. But, in this case, the defender hath granted bond for her proper debt, whereupon the defunct's heritage is appraised or adjudged, and whereby the pursuer will be excluded or postponed. It was *replied*, That the granting of the bond by an apparent heir, though apprising or adjudication followed, doth not infer the passive title of behaviour, unless the apparent heir take right to, and intromit by the said adjudication or apprising, as is clear by the act of sederunt upon the Earl of Nithsdale's case, No 84. p. 9738. the 28th day of February 1662. It was *duplicated*, That the general passive title of behaviour, making the apparent heir liable to the defunct's whole debt, is not here insisted upon, but the passive title of charged to enter heir, which reaches only to the debt, whereupon the charge is raised, and which is elided by a renunciation *re integra*, which cannot be where the defunct's heritage is affected for the apparent heir's proper debt.

THE LORDS found the reply relevant, that the defunct's heritage was affected for the apparent heir's proper debt, by apprising or adjudication, to exclude the apparent heir's renunciation, and to make her liable for this debt, unless she purge the apprising, or adjudication of the defunct's heritage for her own debt, it not having been the defunct's debt.

*Stair, v. 2. p. 460.*

1682. November 3.

HENRY BLYTH against JAMES LAWSON.

No 87.

MR HENRY BLYTH being a creditor of umquhile James Lawson of Brotherstones, intents process against James Lawson, as lawfully charged to enter heir to umquhile James Lawson, his father, the debtor, and as he who being liable to his brother and sister for L. 1000, and also, as having granted bond to one Dunlop for a certain sum of money, upon both which grounds, there was a comprising of his father's lands of Brotherstones led against him; the ground of this action was, that he had suffered his father's estate to be comprised for his own debt, and so Blyth, a creditor of the father's, was secluded. It was *alleged* for the defender, That the Earl of Nithsdale's practise (*supra*) was only in the case where bonds were granted by the apparent heir, whereupon comprising of the defunct's estate was deduced for the heir's behoof; but, in this case, the comprising was not to the defender's behoof, neither has the pursuer done diligence to affect the estate *debite tempore*. THE LORDS found, that, albeit there was no

fraud nor dole, and that the comprising was not to his own behoof; yet that the defender ought to be liable to the pursuer's debt, so far as the sum contained in the apprising might extend to; or, otherways, he ought to purge the said apprising, to the effect that the pursuer, who was the father's creditor, might have access to the lands comprised, which was the father's estate, without being incumbered with the foresaid comprising, which proceeded upon the son's debt.

No 87.

*Fol. Dic. v. 2. p. 33. P. Falconer, No 23. p. 12.*

\* \* Harcarse reports this case.

1682. *December*.—AN apparent heir having granted a bond for a small sum, whereupon his predecessor's estate was apprised from him, as specially charged to enter heir; the apprising happened to expire, and the said apparent heir being charged to enter heir at another creditor's instance, he offered to renounce.

It was *alleged* for the creditor, That *res* not being *integra*, he cannot renounce, till he purge the land of the expired apprising, whereby a great estate is carried away for an inconsiderable sum.

*Answered* for the apparent heir, That he was willing to pay the sum contained in the bond, on which the apprising proceeded, which had not expired, if the pursuer had redeemed within the legal; and so *per eum stetit*.

THE LORDS repelled the apparent heir's answer, and found, that he ought to purge the apprising, or be liable to a sum equivalent to the worth of the land.

*Harcarse, (COMPRISINGS.) No 281. p. 66.*

## S E C T. XII.

## Behaviour upon Act 1695.

1710. *June 7.*WATSON *against* BROWN.

My Lord Royston, as Probationer, (in place of Lord Prestonhall, who had demitted,) reported Watson against Brown. Captain Brown in Leith being debtor to Watson of Saughton in 2000 merks by bond, he pursues Alexander Brown, merchant in Edinburgh, his eldest son, on this passive title, introduced

No 88.

An apparent heir's intromission with the mails and duties of his