

1701. July 23. JOHN BAILLIE *against* ALEXANDER CHANCELLOR.

No 33.
An appriser executed a renunciation of his right in favour of the debtor, which he kept in his own custody till his death. His apparent heir, by intermeddling with it, and giving it up to the debtor for gain, was found to have incurred behaviour.

JOHN BAILLIE of Woodside pursues Alexander Chancellor, merchant in Edinburgh, for a debt due by Helen Barns, his mother, on this passive title, that Helen having an apprising on the lands of Bagbie, she subscribed a renunciation thereof, which he either found among her papers after her decease, and kept it, which meddling was an undoubted gestion and behaviour, or it was in his hands before her death, and was after it given by him to his brother William, to be given up to the debtor-reverser, in prospect of gain. *Alleged*, He got it from his mother to give up to the party; and though his endeavouring to get money for it might be a fault, yet it cannot amount to the passive title, especially seeing he had the gift of his mother's escheat, which is a probable and colourable title to assoilzie from behaviour, as Stair shews, Book 3. Tit. 6.; and 10th June 1674. Spencerfield against Hamilton, *infra*, h. t. 2do, He had a *dispositio omnium bonorum* from his mother, which is enough to elide behaviour, which is only inferred by deeds transmitting property, and not by renunciations extinguishing it, 5th July 1666, Scot against Auchinleck, *infra*, h. t. *Answered*, His giving up and disposing upon the said renunciation could be by no other title but *animo domini et haredis*; neither does the escheat palliate, for that gives right only to moveables, whereas this was an heritable subject; and her *dispositio omnium bonorum* gave as little right, being only deposited in the Clerk's hands to get her *cessio* and suspension, and belonged to all the creditors as much as to him, and was never his evident. THE LORDS repelled the defence, and found his intromitting with and disposing on the said renunciation, after his mother's death, on prospect of money, was sufficient to infer the passive title of behaviour, and that the gift of escheat nor *dispositio omnium bonorum* did not purge; and thought this way of evacuating the predecessor's fee by renunciations, was a more dangerous invention to the prejudice of creditors in redeemable rights, and might cover the intromissions of apparent heirs more than any of the former contrivances had done.

Fol. Dic. v. 2. p. 29. Fountainball, v. 2. p. 121.

1706. June 15. DIGGLES and his FACTOR *against* STEWARTS.

No 34.
An apparent heiress and her husband, mean persons, having received from the defunct's man of business, the

THOMAS STEWART, merchant in Newcastle, being debtor to John Diggles, merchant in Manchester, in L. 80 Sterling, by bond, the said Diggles, and Andrew Dennet, his factor, pursue Janet Stewart, sister and apparent heir to the said Thomas, and John Stewart her husband, for payment on the passive titles; and insisted on this ground, that she and her husband had granted a receipt to John Knox writer, of her brother's writs and evidents, and, particu-