

rinth of trouble how to adjust the warrandice, and to appretiate the rights offered, which may be very little worth, and may occasion great wrangling and debate what shall be the form and stile of such assignations, which is yet unfixed and unknown.—THE LORDS, by plurality, found an heir served *cum beneficio* might offer an assignation to the inventory, as an executor may; and that the creditor is obliged to accept of it. But *queritur*, if the subject assigned be incumbered by diligences, must not the debtor purge them ere the offer can be received, in the terms of the 19th act 1672, introducing adjudications in place of apprisings? So this decision stopped the adjudication.

*Fol. Dic. v. 1. p. 362. Fountainball, v. 2. p. 624.*

No 5.

1712. November 8.

JOHN VINT against The LORD and LADY HAWLEY and the EARL OF DALHOUSIE.

IN the action at the instance of John Vint, as creditor to the deceased William Earl of Dalhousie, and William now Earl of Dalhousie, as representing the defunct; the pursuer insisted *primo loco* against the Lady as heir of line.

THE LORDS found, that the Lady being served heir *cum beneficio inventarii*, and having no intromission with the defunct's estate, but what was exhausted by payment of preferable debts, and being debarred from meddling with the rest of the estate, by a depending competition with the heir-male, she is not personally liable, if she assign the inventory to the pursuer; but decerned her either to assign or to pay the sum due to him. And accordingly a day was taken for her to produce a disposition.

*Fol. Dic. v. 1. p. 362. Forbes, p. 629.*

No 6.

An heir of line served *cum beneficio inventarii*, having no intromission with the defunct's estate but what was exhausted by payment of preferable debts, and being debarred from the rest by a competition for preference with the heir-male, was decerned to assign the inventory to the defunct's creditor, or to pay the debt due to him. See No 12. P. 5345.

1724. February 5.

DOUGLAS of Cavers, and other Creditors of THOMAS PRINGLE, against WALTER PRINGLE, his brother.

THE defender was nominated and appointed sole executor and universal legatar in his brother's testament, and had served heir to him *cum beneficio inventarii*.

Cavers, and the other creditors of Thomas, upon his decease, obtained decreets of cognition before the Commissary of Peebles, and upon these they not only were decerned executors creditors to the defunct, made up inventories and confirmed the same, but they also pursued Walter for payment of their debts, as representing his brother *passive*.

The defender *pleaded* his service, as heir *cum beneficio*, in bar of this action, and the defence was sustained.

No 7.

A creditor of a defunct pursued his heir *cum beneficio* to assign the heritage in his inventory. Answered, he was obliged only to make the value forthcoming. Found that the heir must either pay or assign.