

ordingly, that if at any time the heir made this value furthcoming to the creditors he was at liberty to make of the estate what he would. It was added, that were this otherwise, it would put an effectual stop to the industry and improvements of heirs who enter by inventory, since no man will readily plant where another is to reap. THE LORDS notwithstanding found the heir liable to account according to the present value. See APPENDIX.

*Fol. Dic. v. 1. p. 363.*

No 11.

1731. February 12. JOHNSTON against STRACHAN.

No 12.

AN heir *cum beneficio* must pay or assign the inventory; and it is not sufficient that he offers to account for the value of the subject. See APPENDIX. See No 6. and No 7. p. 5335.

*Fol. Dic. v. 1. p. 362.*

1733. June. VEITCH against YOUNG and BURN,

No 13.

AN heir *cum beneficio*, as he may pay *primo venienti*, so he may grant heritable bonds, though the effect be to prefer these creditors to the other creditors of the defunct. See APPENDIX.

*Fol. Dic. v. 1. p. 361.*

1733. July 6. GRAY against M'AUL.

No 14.

AN heir entering *cum beneficio* brought a process against his predecessor's creditors, for ascertaining the value of the estate, to be proved by witnesses; concluding, that the estate might be declared to belong to the pursuer, and to be free and disburdened of the predecessor's debts, upon payment to the creditors of the proved value. It was yielded by the creditors, That in a personal action against the heir upon the passive titles, he is no further liable than *in valorem*, because so says the act of Parliament. But they contended, That as they had their option to insist personally against the heir, or to make their debts real upon the estate; if they chose the last, there was nothing in the act to bar them from making the best of their debtor's effects, by dividing the subject among themselves after they had made it their own by legal diligence, or by disposing of it at a public roup, and dividing the price. THE LORDS notwithstanding sustained process, and decerned in terms of the libel. This was in the case of personal creditors. See APPENDIX.

*Fol. Dic. v. 1. p. 363.*

An heir *cum beneficio* was allowed to bring a judicial proof of the value of the estate, and to account at that value, so as to have the estate declared free; but there were only personal creditors.