No 69. ed by the said Earl to the pursuer, so as effectually to give her security, in the said heritable bond of L. 20,000 Sterling, and infeftment following upon, for security and payment to her of the said L. 15,000 Sterling, and interest thereof, and penalty, if incurred; but not to affect the defender's person, nor his other estate.

Reporter, *Lord Minto.* Act. *A. Lockhart & R. Dundas.* Alt. *Ja. Ferguson & Jo. Grant* Clerk, *Forbes.*

Fac. Col. No 7. p. 10.

1757. *December* 1. GORDON *against* MAITLAND.

No 70.

FOUND, That a service as heir male upon a deed of entail, but without reciting the prohibitory clauses, does not infer an universal passive title.

Fac. Col.

*** See this case, *voce* TAILZIE.

1760. *November* 19. HALL *against* BUCHANAN.

No 71.

A creditor pursuing a decree of constitution in common form against the son of his debtor, who, in obedience to the order of the Court, had made up titles to his father's estate, and disponed the same to assignees, under a commission of bankruptcy; it was *urged*, That he could not renounce to be heir, and ought to be subjected *passive* to the debt pursued for. THE LORDS found no passive title was incurred. See APPENDIX.

Fol. Dic. v. 4. p. 42.

1782. *November* 19. SAMUEL BROWN *against* PETER BLACKBURN.

No 72.
How far a residuary legatee, accepting a sum of money for a conveyance of his right, is liable to that extent for the testator's moveable debts.

BY the death of Dr Brown of Jamaica, his personal estate in that island, after payment of his debts and certain legacies, devolved to Mr Blackburn, in the character of residuary legatee, his real estate there, to Patrick Brown, as his heir at law; and a debt due to him, which was secured by infeftment in Scotland, to Samuel Brown, as his heir of conquest.

A transaction took place between Mr Blackburn, the residuary legatee, and Patrick Brown, the heir in Jamaica; by which, for the sum of L. 1000 Sterling, the former sold to the latter his interest in the personal estate.

It however soon appeared, that the subjects falling under this transaction were inadequate to the payment of the Doctor's debts; and a personal creditor

of his having attached in Scotland Samuel Brown's share of the succession, the latter, for his relief, pursued Mr Blackburn, as having intromitted with the effects primarily liable for debts of that sort. In support of this action, the pursuer

No 72.

Pleaded; By the acceptance of a considerable sum as a *surrogatum* in place of the whole free executry, the defender must be understood to have intromitted to that extent with the moveable estate of the defunct; otherwise, it would be in the power of the executors, or residuary legatees, by agreements of this kind, in defraud of creditors, to secure the whole funds to themselves.

Answered; Had the residuary legatee, by the interposition of a third party, intromitted with the moveable funds of the deceased, his situation must in all respects have been the same as if he had taken effects to the same extent directly under the will. But here there were no effects to be the subject of intromission. The bargain, therefore, concerning the eventual profits arising from the bequest in favour of the defender, not having in the least diminished those funds out of which the pursuer could hope for relief, it affords no foundation for the present claim. July 5. 1666, Scots against Affleck, No 50. p. 9694.

THE LORDS sustained the defences. See No 21. p. 5228.

Lord Reporter, *Hailes*. Act. *Rae*. Alt. *Armstrong, Ilay Campbell, Crosbie*. Clerk, *Home*.

C. *Fol. Dic. v.* 4. *p.* 43. *Fac. Col. No* 66. *p.* 104.

1783. *February* 26. JOHN BLOUNT *against* JOHN NICOLSON.

No 73.
Passive title, whether inferred, universally, by entering heir *more burgi*, or by *bona fide* disponing the heritage to trustees for the predecessor's creditors.

BLOUNT was creditor to the father of Nicolson, who died the proprietor of a tenement in the town of Dumfries. In this tenement Nicolson was cognosced heir to his father by the Magistrates of the town *more burgi*. He afterwards disponed the subjects to certain persons, as trustees for his father's creditors; having done so by the direction of a meeting of these creditors.

Blount then instituted an action on the passive titles, against him as having entered heir *more burgi*, and likewise as having granted the disposition above mentioned.

Pleaded for the defender; *1st*, By entering *more burgi* heir to his father in a special subject only, he is not universally liable for the debts of the predecessor, but only *in valorem*, in the same manner as if he had been an heir of provision. *2dly*, The disposition was *bona fide* granted at the desire, and for the benefit of creditors, and ought not to infer to him the penal consequence of a passive title.

Answered; There is no distinction known in law as to the extent of representation between entering heir *more burgi* and service in the more regular and