

SUCCESSION.

SECT. I.

Succession in Heritage AB INTESTATO.

1588. February.

HAY against ———.

THERE was one Hay, master of an hospital, and superior of certain acres of land in Peebles, who pursued for the wilful error committed by an inquest, in so far as they had served *affirmative* the youngest brother and not the eldest brother's bairns alive, to be the nearest heirs to succeed to the defunct, who was the third brother and conquerer of the lands. It was answered, that there was no error committed by the inquest, in so far as the eldest brother's bairns had presently, in the time of the service, renounced the heirship in favours of the youngest brother, who was served, et de jure unicuique licet jure pro se introducto renunciare, et L. 29. C. De pactis. It was answered, that the renunciation of the eldest brother's bairns could not purge the inquest from error, because the points of the brieve behoved to be observed, qui fuit legitimus et propinquior hæres, et in hoc casu, the inquest could serve no otherwise but juxta jus sanguinis quod non jure civili tolli potuit, for the service of general heirs is no otherwise extended but as declaratoria sanguinis; and as to the renunciation, it could work nothing, except the maker thereof had been once served heir quia nemo potest plus juris in alium transferre quam ipse habet, et de jure communi hæreditas non adita non transmittitur, prout L. 7. C. De jure deliberandi; and so notwithstanding of the said renunciation, the inquest behoved ay to be decerned to have committed error that had served otherwise quam jus sanguinis requirebat.

The Lords reduced the said service, and found that the inquest had committed error.

No. I.

An inquest was found to have committed error in serving a man as heir to a defunct while there was a nearer heir in existence, although that heir had renounced his right in favour of the person served.