

which was renounced the time of her marriage, or any time before her decease, could not have an heir.

No 12.

Kerse, MS. fol. 137.

1619. December 17. KEITH against MENZIES.

No 13.

No person may have an heir, but he who is either a prelate, or burges in fee undenuded. See No 16. p. 5394.

Fol. Dic. v. 1. p. 365. Kerse, MS. fol. 138.

1623. November 29. WILLIAM RIGG against ROSS or M'KENZIE.

No 14.

FOUND, That a parson provided to a benefice may have an heir.

Fol. Dic. v. 1. p. 365. Kerse, MS. fol. 139.

* * * Durie reports the same case :

IN an action pursued by William Rig Baillie of Edinburgh, against the eldest son of Mr John M'Kenzie, parson of Dingwall, who was convened as behaving himself as heir to his father, by intromission with his father's heirship goods; it being *alleged* that he could not be convened *hoc nomine*, seeing his father was not a person of that quality who could have an heir, and consequently he could not be convened as intromitter with his heirship, and so to make him heir to a person who could not have an heir; seeing his umquhile father was neither prelate, baron, nor burges, which were the three degrees of all the subjects who might have heirs. This allegeance was repelled, seeing the defunct was parson of Dingwall; for the LORDS found, That parsons provided to the like benefices, albeit they were not of the degree of prelates, yet that they might as lawfully have heirs as persons who were infeft in any small annualrent, or in any small piece of land heritably, and who being comprehended under the name of barons or freeholders, had heirs, as also as burgesses, who, albeit but mean craftsmen, and of mean substance, yet they also had heirs.

Act. Pearson.

Alt. Mowat.

Clerk, Gibson.

Durie, p. 84.

* * * This case is also reported by Haddington :

IN the action pursued by William Rig, against the aires and executors of umquhil Mr George M'Kenzie parson of Dingwall, it was *alleged*, That the defunct could have no aires, because he was neither prelate, baron, nor burges.— It was *answered*, That being a beneficed man, he behoved to be reputed to be as