

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

No 14. a prelate; because the Lords had fand; that he who was infest in any lands or annualrent might have an air, albeit he were na baron, but only an heritor.— In respect whereof the LORDS repelled the allegiance, and fand, that he being provided to a parsonage might have ane air.

Haddington, MS. No. 2938.

1628. February 23. DUNBAR against LESLIE.

No 15.

An heir cannot be pursued upon the passive title of behaving himself as heir, by intronitting with heirship moveables, where the father ceased to be *bars*.

Found that a defunct's son could not be liable *passive* for intronitting with the heirship goods, because his father, though a burges, was not alleged to be an actual resident, using trade, but only an honorary burges.

IN a reduction betwixt Dunbar and Leslie, of a decret obtained by James Leslie against one Dunbar, as charged to enter heir to his umquhile father, who was cautioner for a sum of money owing to the said James Leslie by the Laird of Mochrum, principal party obliged; which decret was desired to be reduced, because it was given only against the son of the cautioner, as lawfully charged to enter heir, he being then minor, and as yet is; likeas he, with consent of his curators, produced a renunciation to be heir, subscribed by them and him, and so desired to be reponed. This reduction was raised by the minor, and also by one who was cautioner for him in a suspension, raised by the minor of that same decret, upon that same reason, and wherein protestation was admitted; and therefore the reduction was also raised at the instance of the cautioner in that same suspension, against which the said protestation was admitted, and because the minor was dead since the intenting of the reduction, and the day of compearance in the second summons, the LORDS found, That the said cautioner could not use the said renunciation, the minor, maker thereof, being dead, as he might have claimed the benefit thereby, if the minor had been living, and therefore assoilzied from that reason at the cautioner's instance; but thereafter the parties were ordained to be further heard, this being thought to be an hard decision.

This action being again called in presence of the Lords, upon 26th June 1628, this decision was altered, and found that the cautioner might produce the minor's renunciation, and use it for his own liberation, albeit the minor was dead, and the reason of his reduction was sustained.

July 8.—IN the reduction Dunbar against Leslie, mentioned 23d February 1628, the defender alleging that the minor could not renounce to be heir, because *res non fuit integra*, seeing he was successor to his father's lands *post contractum debitum*, and also had behaved himself as heir to his father, by intronission with his father's heirship goods, and uplifting of the mails and duties of the lands wherein his father was infest, and that his father was a burges of the King's burgh-royal, and that he thereby was a person who in law had an heir; the defender condescended upon sundry alternatives, whereby he *alleged*, that *res non erat integra* to the minor to renounce; which alternatives being consi-