

No 29.

son could have just interest to have intromission with the same. To this was answered, partly be reasoning among the Lords, partly at the bar, That the horning of the defunct took not away the intromission and deed of him *qui se gessit pro hærede*, for albeit a man be at the horn *non privatur jure, ab intestato succedendi active et passive*, and a man may be at the horn and have no heir, and being at the horn, others may succeed to him. *Hæc est opinio Baldi, in L. 1. C. De hæredibus instituendis, ubi loquitur, de et deportat. qui fictione juris idem est cum eo quem nos dicimus* at the horn.—THE LORDS found be interlocutor, That the horning took away all intromission with heirship goods, and that the party could not be heard to allege *pro hærede gerere*, in respect of the said horning.

.Colvil, MS. p. 388.

1629. June 27.

ROBERTSON and TRAQUAIR against DALMAHOY.

No 30.

A relict having intromitted with the heirship, was allowed deduction for the maintenance of her children, altho' never entered heirs to the defunct.

A DEFUNCT dying, leaving two bairns and his wife behind him, which two bairns were entertained by the relict their mother during their lifetimes; likewise she intromitted with the goods of her husband, and such as were heirship after the decease of the bairns, who died never being served, nor entered heirs to the defunct, the defunct's brother being served heir to him makes another assignee to the heirship, thereby pertaining to him; which assignee pursuing the relict, as haver of the heirship, for delivery of the same to him; it was found that the relict's entertaining of the bairns ought to be allowed to her, and defalked off the first end of the price of the said heirship, which was so found, albeit the pursuit was moved by the assignee to the heir, and albeit the bairns entertained by her were never served heirs, and so had no right themselves to claim the heirship, and albeit the entertainment was made by the mother of her own bairns, and so thereby presumed to have been done *ex pietate materna*, albeit neither the entertainment was liquidate nor any action intended therefor, notwithstanding whereof, the said exception was sustained.

.Durie, p. 452.

1667. November 2.

POLLOCK against POLLOCK.

No 31.

A son having renounced to be heir to his father, found that the heirship moveables belong to the father's executor.

JOHN POLLOCK having granted a bond of 5000 merks to James his second son of the first marriage, the said James intended and pursued for payment both Robert eldest son of the same marriage, heir of line, and John eldest son of the second marriage, and heir of provision, as charged to enter heir respective. It was alleged for the heir of the first marriage, That he offered to renounce; and for the heir of provision, That the heir of line ought to be first discussed by adjudication; and condescended upon moveable heirship, which might be ad-