

rinth of trouble how to adjust the warrandice, and to appretiate the rights offered, which may be very little worth, and may occasion great wrangling and debate what shall be the form and stile of such assignations, which is yet unfixed and unknown.—THE LORDS, by plurality, found an heir served *cum beneficio* might offer an assignation to the inventory, as an executor may; and that the creditor is obliged to accept of it. But *queritur*, if the subject assigned be incumbered by diligences, must not the debtor purge them ere the offer can be received, in the terms of the 19th act 1672, introducing adjudications in place of apprisings? So this decision stopped the adjudication.

*Fol. Dic. v. 1. p. 362. Fountainball, v. 2. p. 624.*

No 5.

1712. November 8.

JOHN VINT against The LORD and LADY HAWLEY and the EARL OF DALHOUSIE.

IN the action at the instance of John Vint, as creditor to the deceased William Earl of Dalhousie, and William now Earl of Dalhousie, as representing the defunct; the pursuer insisted *primo loco* against the Lady as heir of line.

THE LORDS found, that the Lady being served heir *cum beneficio inventarii*, and having no intromission with the defunct's estate, but what was exhausted by payment of preferable debts, and being debarred from meddling with the rest of the estate, by a depending competition with the heir-male, she is not personally liable, if she assign the inventory to the pursuer; but decerned her either to assign or to pay the sum due to him. And accordingly a day was taken for her to produce a disposition.

*Fol. Dic. v. 1. p. 362. Forbes, p. 629.*

No 6.  
An heir of line served *cum beneficio inventarii*, having no intromission with the defunct's estate but what was exhausted by payment of preferable debts, and being debarred from the rest by a competition for preference with the heir-male, was decerned to assign the inventory to the defunct's creditor, or to pay the debt due to him. See No 12. P. 5345.

1724. February 5.

DOUGLAS of Cavers, and other Creditors of THOMAS PRINGLE, against WALTER PRINGLE, his brother.

THE defender was nominated and appointed sole executor and universal legatar in his brother's testament, and had served heir to him *cum beneficio inventarii*.

Cavers, and the other creditors of Thomas, upon his decease, obtained decreets of cognition before the Commissary of Peebles, and upon these they not only were decerned executors creditors to the defunct, made up inventories and confirmed the same, but they also pursued Walter for payment of their debts, as representing his brother *passive*.

The defender *pleaded* his service, as heir *cum beneficio*, in bar of this action, and the defence was sustained.

No 7.  
A creditor of a defunct pursued his heir *cum beneficio* to assign the heritage in his inventory. Answered, he was obliged only to make the value forthcoming. Found that the heir must either pay or assign.

No 7.

The pursuers afterwards *insisted*, That he should be ordained to assign the heritage contained in his inventories to them, effecting to their several debts.

To this the defender *objected*, That an heir *cum beneficio* was not obliged to assign the inventory, but only to make the value thereof forthcoming to the creditors, as was plain from the words of the act of Parliament 1695: And further, he *contended*, That whatever might be the fate of the general point, yet, in this case, he could not be obliged to assign to these pursuers, who were executors decerned and confirmed, and by the confirmation appeared to have subjects in their hands far exceeding the debts acclaimed by them.

It was *answered*, That the general point had been determined 8th November 1712, Vint against the Lady Hawley, No 6. p. 5335. where my Lady Hawley was expressly decerned either to assign or pay. And to the other part of the defence it was *answered*, That a creditor had power to affect all the subjects belonging to his debtor, for his security till payment: An arrestment could not hinder an adjudication, nor *e contra*, though the subjects differently attached should far exceed the debts upon which the diligences proceeded.

THE LORDS found, that Mr Pringle must either pay or assign.

Act. Ch. Areskine.

Alt. Wal. Pringle.

Clerk, Dalrymple.

Fol. Dic. v. 3. p. 261. Edgar. p. 22.

1724. July 4. MRS JANET SCOT *against* SIR ALEXANDER BURNET of Leys.

No 8.  
Creditors of  
an heir enter-  
ed *cum beneficio*  
*inventarii*,  
are preferred  
according to  
their dil-  
gence.

SIR ALEXANDER BURNET having entered heir *cum beneficio inventarii*, sold part of the inventoried estate to Mr Fergusson of Pitfour; in whose hands, as debtor for the price, an arrestment was laid by Mrs Janet Scot, one of the defunct Sir Thomas Burnet's creditors, and who had obtained a decret of constitution against the present Sir Alexander. She having thereupon insisted in a process of forthcoming, the defence offered for Sir Alexander Burnet was, 'That he being heir entered *cum beneficio inventarii*, was liable to the creditors 'in the value only of the inventory; and the inventory not being sufficient to 'answer all the defunct's debts, the arrester could only draw her share propor- 'tionally with the other creditors.'

In support of which it was *argued*, That the value of the respective debts must be calculated at the time of the heir's entering by inventory; if there be not sufficient fund for all, the several claims are so far *ipso jure* diminished, at least in so far as they relate to the heir, who by the law is protected from being further liable than to a limited extent; whence it was *urged*, that no diligence however in its nature preferable, could support a claim beyond that proportion of the inventory, which would fall to the user of the diligence, upon a just division amongst all the creditors. In consequence of this it was thought, that if an adjudication were leading against an heir who has entered *cum beneficio inventarii*, it would be competent to stop the adjudication, if the heir should offer