No 2.

and a discharge thereof, ordered to be given to the minor, the LORDS found, that the said decreet could not hinder him to renounce to be heir, quia non se gessit pro hærede; for these arguments; 1mo, The minor submitted, he not being past 21 years of age, and being able to subscribe, but only the tutors taking burden upon them to him; 2do, A discharge given to him of all things that may be laid to his charge, as heir, non inducunt agnitionem quia sunt verba suspensive et dubitative prolata et sic non probant voluntatem agnoscendi hæreditatem, per legem gentium D. De acqu. hæreditate; 3tio, It must be an express act circa ipsam hæreditatem, as was decided betwixt Munro and Graham, that the discharge might stand, in respect the minor renounced not purely and simply, but with exception of the lands contained in the contract of marriage, and so he is capable of a discharge of all actions preceding the contract.

Fol. Dic. v. 2. p. 340. Kerse, MS. fol. 138.

1626. *July* 20. HARVIE *against* BARON.

No 3.

A DECREE being recovered against a party as lawfully charged to enter heir, he, in a reduction of the said decree, though 16 years after it was pronounced, was allowed still to renounce, the renunciation being offered *rebus integris*; but this only to the effect to take away all personal execution against the reducer, but nowise to stop any real execution against lands, &c. which the said reducer could claim by his predecessor; and the reducer also in this case to pay a sum modified by the LORDS for the party's charges, he having debursed the same necessarily by the reducer's fault.

Fol. Dic. v. 2. p. 330. Durie.

*** This case is No 173. p. 9038. *voce* MINOR.

1627. *January* 23. LA. OGILVIE *against* LO. OGILVIE.

No 4.
Found, not competent to an heir charged, to renounce, with the exception of lands provided to him, in his mother's contract of marriage. He must renounce simply or run his hazard.

IN an action of registration, at the instance of the Lady Ogilvie against the Lord Ogilvie, who was convened as lawfully charged to enter heir to his father, and for purging whereof he produced a renunciation, whereby he renounced to be heir to him, with an exception therein insert viz. that because his umquhile father was obliged, in the contract of marriage made betwixt him and his said father, and the Earl of Melross and his daughter, now spouse to the defender, to infeft the said defender and his heirs, in the lands mentioned in that contract, and whereupon he had served inhibition, which contract and inhibition preceded this contract, now desired to be registered, and so that

thereby his father was constituted his debtor, that therefore it might be lawful to him to enter heir in these lands, wherein his father was obliged to infeft him, as said is, and whereby he was constituted his debtor for his security, in case he might not come to the right of the said lands otherwise; and which he alleged he might lawfully do, and ought so to be found by the Lords, without any hazard or danger to be heir generally, or but any peril to ensue therethrough to him, seeing this pursuer could not have prejudice therethrough. THE LORDS found, that either the defender ought to renounce *simpliciter*, without any exception and reservation therein, or they could not receive their renunciation with such a provision and exception, as was craved; seeing if he intended to enter heir to his father, he behoved to do the same, upon his own hazard; for the LORDS declared that they would make no such provision as was craved by the defender, albeit the same depended upon a preceding cause of debt, but he ought to seek the implement thereof otherwise, as he pleased.

No 4.

Act. *Nicolson & Aiton.* Alt. *Stuart.* Clerk, *Scot.*
Fol. Dic. v. 2. *p.* 340. *Durie, p.* 261.

1629. *January* 13. NISBET *against* NISBET.

No 5.

A DECREET being given against a party, as lawfully charged to enter heir, after the defender compeared, and took a day to produce a renunciation to be heir, and the term being circumduced for not producing of the renunciation, and so decreet given, which being thereafter suspended, upon production of a renunciation;—the LORDS found, that the same might be received by way of suspension without reduction, and received the same, albeit the decreet was given against him, for not producing, after a term assigned to him for that effect; and so against him compearing, he being then major; and so suspended the said decreet upon production thereof.

Act. *Stuart.* Alt. *Craig.* Clerk, *Gibson.*
Fol. Dic. v. 2. *p.* 340. *Durie, p.* 413.

1632. *December* 11. WOOD *against* BLAIR.

No 6.

ONE being pursued as lawfully charged to enter heir to his father, and taking a term to renounce, and at the term offering to prove, that he had an elder brother living, and so he could not be that person that could be charged to enter heir to his father, his elder brother being alive; the LORDS found, he ought not to be heard to propone this allegeance, and thereafter suffered to renounce, if he succumbed to prove the same.

Durie, p. 657.