

Excluded the warrant *Registred*: Whereas Returns are original & indies properly Concerning Private parties only.

Sometimes Returns are taken away by Exception, as Where a second Brother is Returned heir of his father, while an Elder Brother lives, or a Daughter while she has a brother alive: In which cases of two pretending to be heirs of the same kind, the very appearance of the Elder Brother is, makes the Return of the second Equivocal with respect to the Return, and the appearance of a brother with evident facts void the Return. Thus in a Competition between a brother and sister both claimed heirs to their father, the latter preferred the brother to be an Excommunicate Papist, and this Return superior to the Return of the Brother, who was rendered incapable to succeed as heirs to the father, as heir to his father when an Elder Brother was absent and he had died, was found null by Exception at the instance of one who had an opposing against the Elder Brother after he came home. In a case of 1673 Lamb contra Anderson it was insisted relevant to the Return of one as heir of his father, that it was offered to be proved by his oath, that he had no blood Relation to the Deceased 10 Feb. 1673 Murray contra his heir and Heir. In fulfillment of a promise to a person who was not proprietor thereof granted upon a piece of favour, was found null without Majesty, to Redeem the same 12 1671 Gavard contra his lands. A Return found null in one head, is he in Latin Hair lib. 3 fol. 5 § 42. A General Return was not sufficient to support the same but the brevity Executions thereof and service, it did not appear by any Minutes of the process, that Witnesses had been found upon the proximity of blood, that the Judge had some upon their own private knowledge thereof, but the persons of Justice were ordained to be cited to give their oaths upon what witness they heard: Because the Minutes of a General Service which may be Expede before any Judicatives, used not to be exactly kept 1668 Morice of Alton contra Rowan.

Having thus set forth, how the laws of the Kingdom are made up, and Extinguished, I shall now Consider what Returns they have by being heirs, which is either Active, or passive.

Chapp. 3.

The Active Interest of heirs.

The Active Interest of heirs, is the benefit they are entitled to which is partly Competent to them before they enter heirs, or own the right in their favour; partly, after they are Entered or owned the right. The benefit accruing to heirs before their entry is Common to all Apparent heirs: The advantages belonging

Heirs entered, are appropriated to them respectively.

Tit. 1.

The Active Interest, or the Advantages and Priviledges Competent to all Apparent heirs before their Entry.

An Apparent heir of what ever kind, has, during his Apperance, several Valuable Rights and priviledges belonging to him, as 1^o of the year of Death bed, 2^o the year of Deliberation. 3^o Exhibition ad Delib. and 4^o Almond out of the predecessor's lands &c.

Sec. 1.

The Law of Death bed.

The Law of Death bed is an Ancient priviledge Introdud in favour of heirs whollor of one's male, but is a provision 26 January 1726. M. of Clifdale contra E. Dundas 25 Feb. 1663 Replecion contra Replecion by Immemorial Custom. Hair lib. 3 fol. 9 § 27 lib. 4 fol. 20 § 38 As much of our laws, that not by Statute with Reg. cap. 13 the heir George the second (Cap. lib. 3 fol. 5 § 40) seems to insinuate, that they can not when their predecessor are in a dying Condition, and more subject to Unreasonable Imprivity of their about them, suffer prejudice by their disposing of or affecting Equities by their Real Estate Divulable words or assignments to such bond 24 Feb. 1624 Donalson contra Donalson. M. to bond Executing Executors 10 January 1726 May and his wife contra Roberson. It is directed, by granting a personal bond whereupon the same may be redjudged or approved February 1624 Schaw contra Gray. The Law of Death bed was calculated to secure dying persons from being influenced by sly or direct Insinuations of their friends and about hanging about them, to do things contrary to their Honour Interest and settled Resolution when they were in perfect health and less subject to be wrought upon by such Importunity. Poor persons sick and in fear of Death have not a deal of them that reason of Mind; nor that firmness that is necessary to make Dispositions that are well Considered, and are Exposed to the flatteries and Importunities of persons who besage them; and who often tender these forward instances to them who might give them what some Divines particularly the popish Clergy by their invention of Purgatory and the efficacious power of prayers for the Dead, and valuable Indulges, is so far to impose upon dying persons as to obtain from them not only Extravagant gifts, but sometimes also their whole heirs. Those who Dispose of their Estates when they are in full being of body and Mind, are not Exposed to any one of all these Insinuations: And No body can complain that if he will make a disposition