

from being farther liable than to a limited Extent. And the De-  
 = crease however preferable, can support a Claim beyond that in-  
 = portion of the Inventory, which would fall to the share of the De-  
 = crease, upon a Just Division among all the Creditors. Forasmuch  
 = as the heir *Beneficio Inventarij* might stop an ac-  
 = tion Braved against the estate by offering payment of the  
 = debt in proportion with the other Creditors; at least then  
 = he should be held to be a Reservation *contra Executionem* in the Decree  
 = of adjudication, so as in execution, i.e. in the Division of the  
 = estate among the Creditors, the adjudger could only draw  
 = his proportionable share of the Inventory. 2<sup>o</sup> Arrestment  
 = is not in this case a habitable Diligence more than in Execu-  
 = tion because the heir has Receipt to enter to his predecessor cum  
 = *Beneficio Inventarij*, as if it is in Execution and Moveables, &  
 = no Diligence by Arrestment whether of the subject of the debt  
 = or of the Executor's proper effects, can any way affe-  
 = ct a preference, or make that debt, which in a prosecution  
 = against the Executor in a Competition with the other Cre-  
 = ditors, would effectually have but a half or third, extend in af-  
 = coming to the whole debt. 3<sup>o</sup> If Creditors were in this case  
 = to be preferred according to Diligence, the heir would have  
 = his power to prefer the Creditors as he thought fit by  
 = covering the effects to some and concealing them from  
 = and by giving timely notice in order to use the first Diligence  
 = and many other artifices of the like kind. It was therefore  
 = need for the benefit of all the Creditors, the benefit of the Inven-  
 = tory in heretage, tied not up Creditors from doing Diligence  
 = more than when the heir enters without Inventory,  
 = it is so far from diminishing their Claims if so joined  
 = they stand equally good against the heir as against the pre-  
 = decessor: since the heir, if he neglects or over-booking the  
 = privilege pay to any Creditor his whole debt tho' it far  
 = exceeds the Inventory, will have no *Pandictio* in debt  
 = tho' it is always competent to one paying more than he  
 = The *Pandictio* belonging to the heir, which as other privileges  
 = he may or not at pleasure, is not competent so long, as he  
 = had any share of the Inventory & accounted for the same  
 = with him, but can only be claimed after the Inventory  
 = is exhausted by payments made to Creditors that he  
 = has no further liability so that he hath no Relief  
 = hence against an adjudication Braved, unless he can prove  
 = that he hath already paid up the whole subject of the

Inventory to preferable Creditors, or such as had at least Estab-  
 = lished a *Natus Realis* upon the subject. The Actions against  
 = an Executor or a Creditor may get the better of another by the  
 = forwardness of his Diligence. His true Executor cannot be Ar-  
 = rested because the Executor as a Common trustee is obliged  
 = to administer and do Diligence for the benefit of all having  
 = Claims upon the subject of execution, and is not liable as debtor  
 = to any Diligence till he be personally Decreed upon his having  
 = had Intermision with the Executor, in which case the Decree  
 = may be pulled to Execution in every shape against him and  
 = his goods. Where as an heir cum *Beneficio* is not a trustee,  
 = but a proper debtor liable to all manner of Execution real  
 = and personal to the extent of the value of the estate in  
 = the Inventory. 3<sup>o</sup> Creditors are in no worse Situation  
 = with respect to the heir of the debtor, than they are with  
 = respect to the debtor himself, every Man having in his  
 = power those or left to favour particular Creditors.  
 = But if any Creditor can show that his Co-creditor by  
 = collusion with or Deceit of the Debtor obtained the first Diligence  
 = that would be relevant to hinder such a favorite  
 = Creditors preference, which is all the legal safe guard any  
 = Creditor can have from the nature of the thing. The Lord  
 = found that in this case the Creditors are preferred accord-  
 = ing to the Diligence done on their respective debts. A Fin-  
 = dly 1724 Scotland contra Sir Alexander Burnet of Leys. In  
 = his Entred Cum *Beneficio Inventarij* having got cash from  
 = some Creditors of their debts which exhausted the whole estate  
 = of the Common Debtor, and the rest saved part of it free  
 = to himself: The heir was s<sup>o</sup> found obliged to communicate  
 = the benefit of such cases to other Creditors, and to answer  
 = to them for the surplus of the Inventory over and above  
 = what he had truly paid, or given to the former in satis-  
 = faction of their debts. Because, as Diligence upon one  
 = estate requires by his apparent heir are had equally by  
 = the Creditors for the sums truly paid: So neither should  
 = heirs cum *Beneficio* be allowed to clothe themselves with  
 = singular titles affecting their estate to the Exclusion of  
 = other Creditors. For heirs s<sup>o</sup> s<sup>o</sup> cum *Beneficio*  
 = Inventarij being left able to discover the *Pandictio* of the  
 = debts and the objection thereto against them would  
 = other ways have the fairest opportunity to maintain  
 = Vexatious suits against the Creditors, and by purchas-