

of Cariddon. Nor are heirs of provision liable to fine to the father, posterior Voluntary Grantours, Debt to their creditors, but only to his obligations for contracts, Baileys, or just and Rational Considerations, as the providing a competent Dowry to another Wife, or giving suitable portions to Children of another Marriage.

All other heirs not having the benefit of Inventory, are liable to their predecessors debts in full. And the Creditors of the decaying have it in their option to sue either his heirs or Executors for their payments.

Heirs have a privilege that they can be sued only in a certain order, one after another is Discussed, called the benefit of order and Discretion. Thus general obligations not relating to particular lands affect 1<sup>o</sup> the heirs of line, who must be first Discussed. As, an Appointer his Male, passing by his immediate predecessor who has been three years in possession of the Estate, without Infringement, leaving him to a Remotest Male Heir, is not to be pursued for his immediate predecessor's debt till after the heirs of line be first Discussed. 18 Novemb. 1712. *Wint contra E. Dalrymple*. For the law see *Co. l. 29 s. 5. Par. K. 42*. Debt not take away from an Appointer his privilege of Discussing that would be competent to his if devised. 21<sup>o</sup> Heirs of conquest fall to be Discussed in the 2<sup>nd</sup> place. 21 July 1630 *Frailie contra Maxwell & Farlie*. 3<sup>o</sup> Heirs of tailzie who are to hold Relations to the decaying, as 1<sup>o</sup> heirs Male Heir, 2<sup>o</sup> Pral. J. D. Heir. 3<sup>o</sup> Heir of Tailzie, 4<sup>o</sup> Heir of Provision who have no right of Blood. 5<sup>o</sup> Heirs substitutable by Name in lands may be pursued if they obtain and keep the Good Land. 8. 31<sup>o</sup> Heirs as to the 2<sup>nd</sup> question. Heirs answer to Debet. Doubtful. Heirs of provision 8. 31<sup>o</sup> doubtful. But the preference order of Discussing is not observed 1<sup>o</sup> Where the heir substitute is Expressly obliged to relieve the Heir of line, in which case such other heirs may be pursued in the first place. 22 Novemb. 1688. *Scot contra Boswell of Strickland*. Heir substitute who by transaction with her husband's heir of line got the advantage of Succession is supposed to her, and obliged herself to relieve the heir of all his predecessors debts, was found convenient for payment of one of these debts at a Creditors instance, without calling the heir 3 July 1711 *Woods contra Cougall & Comps*. For the being Executor, hereditary, is presumed to have got from the heir of line all Instructions of Discretion that might be against the Debt, and if any be still in his hands is supposed get them up. 2<sup>o</sup> For full heirs, debt relating to particular lands or heritable rights, the heir who succeeded to these lands or rights, must be pursued before the heir of line. *Stair lib. 517*. Thus one having obliged himself and his heirs Male, succeeding in his estate, and his successors whattsoever, that obligation was found to affect the heir Male before

before the heir of line or Executors. 22 July 1682. *Anderson & Elphinstone contra Whitehorn*. And a person having obliged himself and his heirs Male, Successors to him in his estate, that obligation was found not to support that the other heirs were free for not being Expressly, seeing he bound himself, but only that the heir Male should be liable primo loco, and the heirs of line quoad loca 18 Feb. 1663. *Blair contra Anderson*. 3<sup>o</sup> Where the predecessor hath in his obligation expressly Remained the privilege of Discussing his heirs, any heir may be sued at the Creditors option. 4<sup>o</sup> One having Renounced in favour of his father to whom he was heir of Line his heirs and Executors, all he might succeed to here liable or moveable by his father. There was found no Succession to Discuss him as heir of line before pursuing the heir of provision. 12 January 1649. *Pollock contra Pollock & Kellie*, *form*. And where a wife succeeds as heir of line and also against the heir of tailzie as to the Tailzie, she is obliged to enter the heir of tailzie upon his Renunciation, by the heir substituted, and the heir of line Decaying, and must receive the same as if named against the tailzie estate, albeit the heir of line was Decayed and not Discussed, seeing the heir of tailzie had no fullness under his Renunciation to put his general Discretion. 20 Novemb. 1638. *Pollock*. 5<sup>o</sup> Heir of Tailzie contra heir of Provision. After all it is to be observed, that the heir of tailzie at provision is liable to a provisioner not only after Discussing the heir of line, whom the provisioner has Decayed ought first to pursue against. Not on heir of tailzie or provisioner pursuing a provisioner which he was substituted against as being granted by his predecessor may be excluded exception in the first instance, without the ability of calling the heir of line. 31 January 1712. *E. Forbes contra Gilchrist*. Since that non fund 31 multiple.

The Diligence of Discussing heirs must be suited to the Condition and estate of the party. If the person to be Discussed appears being Discussed 26 January 1622 *Rowan contra Murray*. Discretion being Decayed, e.g. But in that case the Renounced Heirage must be acquired. It is not necessary to Discuss a proposed heir of line before the heir Male and of tailzie, if the former heir refused to Renounce. The said Renunciation was put upon the Renunciation. Heir of line, and an Renunciation was omitted out of the topic some estate belonging to the Decayed was omitted out of the topic. 23 July 1708. *Straiton contra E. Lawderdale*. The other heirs may hinder the heir liable in the first place to Renounce to their prejudice, if he hath already Relieved as heir 15 January 1630 *Peghorn contra Frailie*. If the person liable in the first place be entered heir, the Creditor must proceed against him not only by Decree, but also by putting the same to Execution for recovering payment in whole or in part if no Bailment can be