

Ch. 3 Gul. 3 § 24. A Debtor being Charged by his Creditor to enter heir in special to his predecessors lands was allowed to Renounce to be heir, albeit by his Renunciation he would not be free of the Debt which was Contracted by himself. But after such Renunciation the Creditor might have adjudication of the same. Case 23 March 1627 L. Case contra his Brothers. A Decree was made against a person as charged to enter heir at the instance of one of the Debtors of the predecessor, both not tender him to Renounce to be heir, or to enter heir at the instance of another Creditor: there is an adjudication upon a Renunciation to be heir is more Summary Expedient, than an Appraising or adjudication upon a Decree of Partition of the Debt against one as lawfully Charged, which requires another previous special charge to enter heir 10 July 1630 White contra Lord Ruthvens. The Exception founded upon a Renunciation to be heir will be Repelled, if the Renouncer hath already behaved as heir 15 March 1631 Bennet contra Bennet or if the estate of the deceased be burdened with the Renouncer's proper Debt, it left to pursue the same heirs. An Apparent heirs Renunciation provided doth not supply the want of a General Charge, so without it to found a Decree Cognitionis causa 21 June 1710. The Chancellor Magistrate of Aberdeen's Albeit production of a service as heir, would suffice to procure a Decree of Constitution against the heir, without a previous charge to enter heir. But a charge to enter heir where the heir is served, were Equally, as if declared as a charge to perform what is already Implemented. When a Decree Cognitionis causa being expressly limited upon a charge to enter heir, would without such a previous charge be a Decree without a Libel, and consequently Null.

If the eldest of three sons being Charged to enter heir, Renunciation Comodatitii Facientis must be sought: yet after the death of the eldest, the second may be Charged to enter heir in woods Pral. Gul. Heintz.

### Sec. 2.

#### Pro herede, or Behaving as heir.

An heir before Institution of the College of Justice an Apparent heir by Immissing himself and meddling at his own hand with the Inheritance of his predecessor, was liable to the Debtors of the Deceased only for simple Restitution of the Value of what he Intromitted with. But Apparent heirs, who were thus allowed to possess their predecessors Means and estate without any other Charge than that of Accounting for their actual Intromissions, did seldom enter according to an

and when sanctioned by Creditors found ways and means to conceal their Intromissions, or to ascribe them to singular titles by affecting the rights of the Deceased. So put a Deed to this a Kirk, and there are others from being Defrauded and shifted by their Debtors Representations, the words of this or Intromitted the passive title of Heir pro herede, Behaving as heir.

Behaving as heir, is a passive title whereby an Apparent heir Receiving what he has no right to but in the quality of heir, or doing that which he hath no business to do but as heir, or which he is not his business not to do, he is liable to all his predecessors Debts. Which cannot be thought a Charge upon Apparent heirs, if our Law allows them not only to enter with the benefit of their story, but also to hold their year and day to determine whether after enquiry made into the foundation of the estate, they will find their Account in entering, or in totally disclaiming.

To clear up this Matter, I think consider 19 What Acts Impute behaviour as heir, 20 What persons may Incur this passive title, 21 The Effect and extent of it.

This passive title is Inferred, if a person is Bound to take upon him the quality of heir, or by Intromission with either the Movable hereditie for money drawn and separated as such from the other Movable, or Movable Pral. Gul. Heir and Heir's heir, or with any kind of Movable out of which heirship could be drawn Craig Feud. lib. 2 Gul. 9 § 4 lib by taking possession of the predecessor's house at his death, sitting his bed and bed clothes, drinking in his Mazer of broad Pigeon and wearing his silk stockings; tho' the Apparent heir did not sell or dispose of any of these things, 15 January 1630 Elzev Loan contra Fairly. By simple using the tables of the Deceased, and lying in his bed, the standing mabie belonging to the Intromitter, being he entered to and continued in the possession of these goods for the space of his year without changing them to any other by any Judicial Warrant 14 July 1626 Johnston contra Master. By Intromission with heir's things, goods the Confirmed promiseously with the other Movable of the Deceased by his Executor, the Intromitter's own servant for his use and behoof 16 Decemb. 1630 Weir contra Her 10 June 1683 Gordon of Leith contra Leith. And by continuing the predecessor's possession of his things goods, tho' he did to the Apparent heir by all means, who had no legal claim derived to him by the Deceased Pral. Gul. 9 Feb. 1621 Melvil contra Melvil. Behaving as heir was Inferred by Intromission with the predecessors whole silver work without adding a formal drawing of the heirship or taking any of it as