

as such as Feb. 1663 *Stirling contra Campbell*. But a Dispositio
of good made by the owner to his son and apparent heir, was
tained to a failure him from the passive title upon Meddling with
the goods, the they were no other Grants Delivered to him, than by the
father's coming after he was a Widow to live in his Sons house
he died 30 January 1630 *Gaulder wood contra Wilson*. A Discharge
granted by an eldest son to his father in his lifetime of all his
ship goods and Gear which might befall to him thro' the father's
decease, upon the father's then delivering to the son for his own
use and Pleasishing for his house, was not sufficient to make
him liable to the father's debts, as if he had meddled with the
particulars received after the father's death, albeit he offered
not to restore or make forth coming the, or the Value thereof
to the father's Creditors 24 Feb. 1638 *L. Maid Ross contra Hopburn*
The ordinary Defence for taking of the passive title of beheading
as heir by Submission with her ship Moveables is that the
deceased could have no heir ship Moveable, because, if he was a
Widder, Prelate nor Baron nor Burge, &c. he did at the hour and
his decease was gifted and declared before the Creditors present
26 Feb. 1633 *Guthbert contra Monro of Perth* 10 June 1663
Don of Lesmore contra Leth 10 June 1674 *Lady Spencerfield contra*
Hamilton 22 Decemb. 1674 Heir of Leaton of Blair contra
For Declarator being Equivalent to the Confirmation of a Tutor
Subromission with the heir ship goods are unaccountable to the
Donatory, and not to the heibels Creditors, as Widder's Subromi-
sions are unavailing to Executors confirmed after the Subromi-
sion, before any action commenced against the Subromitter.
But not sufficient, that the predecessor was at the hour
at his death, or that his estate was gifted, if not also Declared
before any suit at the Creditors instance. If the Apparent heir
dies and separates his Moveable heir ship from the other
Moveables of the deceased, he would not therefore be
to allege, that the deceased could not have heir ship Move-
ables; the apparent heir having by so doing tacitly acknowledged
the right of heir ship 13 July 1631 *Lo Gadgirth contra*. After
3) it is formerly to be a good defence against the passive title
of beheading as heir by using the heir ship Moveables, if
the apparent heir had a reasonable title of his Subromi-
sion, which he might ascribe, *Restio pro Reade being* *me equi*
animi ten facti Spotswood Gray Gil. Said in first 2) *quod*
of the predecessor, Escheat obtained by the Apparent heir,
the not Declared before any action raised against him
by the former Creditors, did defend him from this
title; albeit the gift were posterior to the Subromi-

is June 1674 *Lady Spencerfield contra Hamilton* 10 Feb. 1676 *Grant*
contra Grant Because the Donatory could not Declare against him
self, and therefore the gift in this case purged the Behaviour; as
the former maker of an executor's Assessor to any suit at the instance
of Creditors excluded Widder's Submission before Confirmation.
This Decision seemed hard to some of the Lords, because, if an appa-
rent heir having by his Submission Declared his Intention to
enter as full, as if he were served heir; some cases cannot
escape to be heir, tho' the predecessor right to the estate were
to were Redeed, and the Creditors have not questioned the passive
title against him. 2) This is not like the Confirmation of an
Executor, which purgeth anterior Widder's Submission, because
in that case there is a person against whom the Creditors may
have action found in their Intention; which is not in the
case of a Donatory of escheat who excludes them. 3) The Dona-
tary having the goods in his hand need no special Declara-
tion; his right might be Declared in General. But such a De-
claration would not be of any avail to an Apparent heir, nor
since the statute 1695 (act 29 Feb. 3 Par. 11.) where by he
cannot, without incurring a Behaviour, purchase any part
of his predecessors estate except at a publick Roup. 4) It seems
that an Apparent heir may still without any such hazard
Intromet with his ship Moveables nomine suo, in breach
of another as a factor granted by the Donatory, if the predecessor
escheat, tho' not Declared into Molans Act, will purge the appa-
rent heir Subromission anterior to the said Warrant 4 July
1665 *Jones contra Wilson* 10 June 1674 *Lady Spencerfield contra*
Hamilton. Because the Donatory being in possession by the passive
matter in virtue of his order, needed no Declarator to complete
his title. But if the Apparent heir had no Warrant from the
Donatory, it sufficeth not to free him from this passive title
sustained by the predecessor's Creditor, that the predecessor
escheat was gifted, if not also Declared before the pursuit. 7)
Another Defence for discharging the Apparent heir from beheading
as heir by Submission with his ship Moveables is, that the
predecessor having died in a house possessed by him in virtue
of a life rent right or tolerance from the Apparent heir, he
of the Apparent heir at his entry to the house by Warrant of
a Judge competent caused Inventory, the durable, and sell
the perishable goods belonging to the deceased, that the goods
or prices might be made forth coming to all parties
interested, and his continuing to keep the Moveables in
the house and sale of such as could not be preserved, not