

within three years after his death ad 24 Par. 1 ff. 1. Ch. 2. of Diligence which Subtles to this preference is Complete Diligence, appoyring or adjudication with Possessment or a Charge against the Superior to Justly, poynding, and decreets for Making arrears of lands or goods for the coming Year lib. 2. Fel. 12. 829. For if it is Indented in three years and perfected thereafter, were it if the preference might come to last 40 Years. These two Executors one Deceased were not preferred to the Receiver of a Disposition Omnia bonorum from one served heir in General and Executor confirmed to the Deceased his Creditors having only Jurat Diligence by Arrestment which they were hindered to Compell by the heir dying within the three Years 17 June 1712. Heir Challo contra Creditors of Harden. For ason heir cannot wrong his predecessors Creditors by a Voluntary right within the Year, he may a Contrario effectually Dispose after expiring thereof, if the Creditors of the Deceased have not Confuted the own Security by Substitution a Charge to enter heir, or Respon which may be done intra Annum De liberandis lib. 1. p. 130.

But the naked appoyring of a person known and be in Scotland is not sustained to found Decrets at his Instance in several cases, yet Action is not sustained at the Instance of one born out of the Country, unless he be served heir, or some Decrement be produced Cognoscing and trying his proximity of blood to the person whose apparent heir he pretends to be 17 Decem 1627 Donaldson contra Brown 23 July 1713 Gordon and Osburn contra Campbell and others.

Tit. 2.

Active Interest Competent to the several kinds of heirs after they are Entered.

Whatever a Man hath in heritable property, he transmits to his heirs, but not alike to all heirs. And the some heirs get the whole heritages, others only particular lands or rights, some fall to the predecessor alone and solely, others only by equal parts or proportionally, all of them succeed in Heritages from the Defunct lib. 2. ff. de Verb. Signif. l. 37. ff. de acquir. Vel onit. ind. That is to the whole right of such a kind, but not to the whole of each right: The Inheritance comprehends only good Rights which are transmissible to a Successor: For if a man be in possession of the Deceased was in possession of some which he had not power to leave to his heirs; and though some part of the Inheritance this Right annexed to the person who

are Extinct by Death, such as a pension for life, and life rent right or offices, do not pass to his heirs. Heirs have Right to these hereditaries and Obligations not only conceived in favour of the Deceased and his heirs, but even such as are granted to him, without mention of his heirs, Stair lib. 2. Fel. 5. 85. ff. de Supra page 599. ff. de An. heir was Subtles to claim Jump amount of promise to dispone lands to his predecessor Had. That 22 Feb. 1670 Heir of Robertson contra Livingston and of a Bond to Release his predecessor of a sum of Money 23 March 1628. Rume contra Rume. Where a person Nominal Substituted in an assignation to the sum in an antient bond without mention of heirs, died before the Instator, the former heirs were found to have right thereto as heirs of provision to the latter 5 January 1670 Hunt contra Finnes. And Evana questi on, which with us is Novicius, was found Competent to the Reverse with the Act expressed, who were held to be omitted by mere oversight: Because the Court were not the ordinary Heir, allowing the Heir, so to become in his own lifetime, 9 January 1662. E. Murray contra Grant.

After the Inheritance which had lain sometime without a Master, is accepted by the heir, his entry to it has this operative effect, that it makes him to be bound in the same manner, as if he had entered to the Succession in the moment that it fell to him by the death of the person to whom he succeeds. What ever space of time there may have been between the said death and the heir by which he takes upon him the quality of heir, it will be the same thing, as if he had Declared his acceptance at the time of the death: And as he will have all the goods which may have augmented the Succession, so he will be also bound for all the Charges that have fallen out since the death of the person to whom he succeeds lib. 2. ff. de acquir. Vel onit. heres. l. 193. ff. de Reg. jur. l. 138. ff. de.

Because Apparent heirs immediately after the predecessor's death, do frequently Dispose their predecessors estate in whole or in part to the prejudice of his Creditors before they come to the knowledge of their debtors death, or before they could do Lawful Diligence against such Apparent heirs, so did by collusion suffer their predecessors estate to be appoyred or adjudged from them for payment of their own debts real or simulate without respect to the predecessors Creditors, and being first that every Mans estate should be first applied to the payment of his own debts, before it be affected with debts contracted by his heir: Law doth hinder an heir to Dispose his predecessors estate immediately after his death, to the prejudice of the predecessors Creditors, and