

not Inter behaving as heir. But the sale of things not warranted to be sold, or Making use of the things in the Inventory, or any considerable things omitted out of it, both Improbable behaviours. 2^d 26 January 1632. See that contra Pleasford. 2^d 5th is Behaviour as heir, to enter to possess or meddle with any heritable estate belonging to the Deceased, to which the Intromitter would succeed as heir, as to cultivate or farm out the ground, or reap the fruits of it. One was found to have behaved as heir to his father by Intromitting with his rents, albeit he possessed upon a precept of Pleasance heir to his grandfather; seeing his father died last August. For his pretence of Ignorance of his fathers intestment sustained to maintain his own Intestment as a favourable title to purge his passive title; being he was Master of his fathers Writts 23 Nov. 1641. Rouson contra Sinclair. 3^d This passive title is Incurred by the apparent heir possessing his predecessors estate by Virtue of a right to Apprising or Redemption for the apparent heir's own debt real or feigned, acquired by him before or after expiring of the legal Redemption, as if the full right were in his person before or 28 Feb. 1632. The Lord Stair (Lib. 3. tit. 6. § 14 pr.) Give the apparent heir in this case to be liable passive only, if he take right to such Apprising or redemption within the legal time by the debtor becoming both Creditor and Debtor the debt is extinguished by Confusion; and not if he acquire the same after expiring of the legal time. Because the Statute 1661 (Cap. 62 Part. 1. § 8. 2) Allowing appraisings required by the apparent heirs of debtors to be redeemed from those appraisings by payment of the sums truly given for them, doth not extend to appraisings sold against apparent heirs themselves. But our Law seems to make no such distinction. Behaving as heir was found not suffered by an apparent heir causing apprise the predecessors estate for the appraised heir's proper debt, unless he or she deriving Right from him Intromit 13 Decemb. 1646. Nicoy contra Lord Balmerino. But that apparent heir was found to have behaved as heir by Intromitting with Rents or feu duties or by entering Vassal albeit the Apprising proceeded not upon a simulative bond granted after the predecessors death, but upon a true debt contracted before by the apparent heir. Edm. de Mercer contra 4th Before the year 1695 Apparent heirs might have lawfully purchased preferable right to their predecessors estates, as by such singular titles easily acquired, enjoyed the same with out being liable to the predecessors debts 10 January 1662. Barclay contra R. R. contra. But this Deputed Behaviour

In an apparent heir to purchase by himself or other person to his behoof, any right to his predecessors estate that is reasonable or Improvable, other ways than as his best offerer at a Publick roup, or through Collusion, or to possess the said estate by right or diligence, as established in the person of a near Relation to whom he may be allowed as heir, not lawfully purchased at a publick Roup Act 29 July 5th Part. 2. W. May, an Apparent heir Intromit, on with the Grants and duties of his predecessors lands after his Decease, was sustained Relevant to make him Universally Liable; Albeit the Apparent heir Intromitted by Virtue of a singular title required by him in the Predecessors lifetime 7 June 1710. Watson of Laigh town contra Brown. 5th Behaviour as heir was inferred by granting a Receipt as heir of the Charter Chiff, containing the whole Arrears and rents belonging to the Deceased without any Inventory and keeping the same two years; this the Receiver offered to Redress the said Charter Chiff and to prove by the oaths of the friends of the deceased who bore witness to his getting it up, that nothing was wanting 28 June 1670. Christ of Southfield contra Barff. One who purchased Exhibition or Writts and got them delivered to him by a balancey, against pro. Rorod, Spotswood Chal. Fils. their own Goods &c. A Man who had several Redemptions of the same lands in his person, having by a Minute of Sale disposed these lands in favour of a purchaser, with Warrandice from fact and deed, for an adequate price to be paid to him, and the Apparent heir to the best of who did Intrest in these lands, having, by a separate Writ of the same date signed before the same Justices with the Minute and expressly Relative thereto, obliged himself for the purchase more further security, not only to Exhibit and produce to him a sufficient progress of the Principal of the said lands against a certain day; but also to warrant the redemptors Disposition at all hands and against all doubly; and farther obliged himself to purge some particular Incumbrances; and to enable him the better to Supplement, he as principal and his friend as Banker obliged themselves, that the Apparent heir should Intrest himself in some other land as heir to another predecessor: the Lord found that the Apparent heir granting the bond of the date of the Minute, supported a Behaviour as heir, 15 Feb. 1711. Dick contra Barff. Lords of Fincon quar. Because here the Apparent heir was in effect the true Disposer, under another pretended Cover, seeing it is not supposable that he would have so anxiously Intrested himself in the Warrandice to get Money for another, who did only oblige himself.