

No 18.

The heir *cum beneficio* must pay the value of the estate, though the ranking of the creditors is not concluded.

1741. June 20. & July 2. LAWSON and Others *against* M'DOUAL.

THE creditors of a defunct, whose heir had served *cum beneficio*, having had many disputes among themselves, and finding it not likely that the ranking was soon to terminate, applied to the Lords to have the heir obliged, either to show a separate estate, or to find caution for their payment, or that the estate should be sequestrated. None of which the Lords being inclinable to grant, the creditors at last fell on a fourth expedient, with which the Court complied, namely, 'To ordain the heir to pay up the price and annualrents thereof to a factor to be named by the Lords;' only so far as he was creditor himself, they allowed him 'to retain upon caution.'

Fol. Dic. v. 3. p. 261. Kilkerran, (HEIR CUM BENEFICIO.) No 3. p. 239.

No 19.

Form of decree against an heir *cum beneficio*.

1741. July 22. GORDON *against* ROSS.

It had been the constant style in the Outer-house, to decern against heirs *cum beneficio*, *deklaratorie*, but very improperly; for decrees *deklaratorie* are only proper where the subject alone, and not the person, is to be thereby affected, as in the case of decrees *cognitionis causa* and the like; but a decerniture *deklaratorie*, where the person is decerned against, which is the case of an heir *cum beneficio*, is inept; and the proper style of such decrees was found to be, what had been pronounced by an Ordinary in this case, viz. 'Decerning against the heir for the debt, reserving to him his objections against full payment.'

Fol. Dic. v. 3. p. 262. Kilkerran, (HEIR CUM BENEFICIO.) No 4. p. 240.

No 20.

1742. November 13. MENZIES *against* DICKSON.

MENZIES of Coulterallers disposed his estate to Dickson of Kilbucho. Upon Coulterallers's death, Robert Menzies his heir, brought a reduction of Kilbucho's disposition, upon the ground that Coulterallers having never made up proper titles to that estate, was not in a capacity to dispone.—*Answered*, That the pursuer being served heir *cum beneficio inventarii* to the disponent, could not quarrel the disposition.—The cause being heard in presence, the Lords found, That the service *cum beneficio* did not bar the pursuer from insisting in his action. See APPENDIX.

Fol. Dic. v. 3. p. 261.