

a subsequent heir passing by, as that heir is only made liable to the extent of the value of the subject, which shows that it concerned only *debita*, or deeds that were resolvable into *debita*, and therefore there was no argument from the case, *e. g.* of an heritable bond to a tack.

Kilkerran, (HEIR APPARENT.) No 2. p. 238.

No 29.

1757. December 15. THOMAS PATON *against* JOHN MACINTOSH.

THE Sheriff of Angus having decerned in a removing at the instance of John Macintosh, an apparent heir, against Thomas Paton; Paton suspended, on this ground, that an apparent heir could not sue in a removing; and quoted a late case, Robert Boyd of Penkill against Macgarva,* which had been the subject of Lord Chesterhall's report, when upon his trials, in which the Court had unanimously found so.

'THE LORDS suspended the letters.' See REMOVING.

For Charger, *Macintosh*.

For Suspender, *J. Dalrymple*.

J. D.

Eol. Dic. v. 3. p. 258. Fac. Col. No 69. p. 118.

No 30.

An apparent heir cannot remove tenants.

1758. July 4. JAMES BURNS *against* ARCHIBALD PICKENS.

JAMES KNOX, when apparent heir to his brother John, sold several subjects in which John had been infest, but in which he himself was not infest. He lived more than three years after the sales so made by him. One of these subjects came into the hands of Archibald Pickens.

George Knox, the brother of James, granted a gratuitous bond to James Burns, to be the foundation of an adjudication of these subjects, for the behoof of Burns; and accordingly Burns obtained adjudication against George, as charged to enter heir to his father John in these subjects; and upon that title brought a reduction of the above sales against the several possessors; and among others against Pickens.

The ground of the reduction was, that the sales had been made by an apparent heir; and therefore flowed *a non habente potestatem*. The defence for Pickens was, that as James Knox, the apparent heir, had been three years in possession, George Knox, the next apparent heir of James, was therefore bound by his onerous deeds; and Burns, on a gratuitous bond from George, could not quarrel those sales which George himself could not quarrel.

The abstract question came therefore to be, whether an onerous purchase from an apparent heir who had been three years in possession, can be defeated by an adjudication upon a gratuitous bond of a subsequent apparent heir, de-

No 31.

An onerous purchase from an apparent heir three years in possession, cannot be defeated by an adjudication upon a gratuitous bond of a second apparent heir, though deduced for behoof of the gratuitous creditor in the bond, and not of the second apparent heir.

* Examine General List of Names.