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formal manner. If an heir wishes not to represent universally, he may resort to the *beneficium inventarii* introduced by the statute of 1695, c. 24. That is the proper and only resource in such a case; and they who without recurring to it chuse to take upon themselves the general character of heirs, should not pretend to decline an universal representation. With respect to the disposition, as it would be clearly of evil consequence to creditors, if an heir, without subjecting himself to the debts of his predecessor, were at liberty to convey his predecessor's subjects to any person whom he might think proper to nominate in the capacity of trustee; so that conveyance ought to infer a passive title.

This question having been reported to the Court by the Lord Ordinary, the "LORDS, in respect the only passive title acknowledged by the defender was that of being cognosced heir to his father *more burgi* in a tenement in Dumfries, which he conveyed to trustees for behoof of his father's creditors, sustained the defence."

Lord Reporter, *Braxfield*. Act. *Maclaurin*. Alt. *Corbet*. Clerk, *Menzies*.  
S. *Fol. Dic. v. 4. p. 42.* *Fac. Col. No 100. p. 159.*

1784. July 7.

The CREDITORS of PROVOST AYTON *against* MARGARET AYTON.

PROVOST AYTON having been vested in an estate, in trust for Mr Colvill, Margaret Ayton, his daughter, agreed, after his death, to grant a reconveyance.

As Provost Ayton had executed a general disposition in favour of his daughter, she might have fulfilled her agreement, without the intervention of a service, or incurring an unlimited representation; but the doer of Mr Colvill, at whose expense the business was carried on, being ignorant of that circumstance, expedite a general service in her behalf, as heir to her father, after which she redispensed the estate to Mr Colvill.

Some time afterwards she was pursued by the Creditors of Provost Ayton, on the ground of the service just now mentioned.

The Lord Ordinary assolized, "in respect there was sufficient evidence that the general service was not taken in order to vest any right of succession, but merely for the purpose of renouncing a trust, and that the pursuer declined any proof of actual intromission."

The pursuer reclaimed; when it was

*Observed* on the Bench; To admit the circumstances stated in the Lord Ordinary's interlocutor as a defence, by way of exception, against the known legal consequences of a general service, would be a dangerous innovation

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General service as heir of line, an universal passive title till set aside by reduction.

Here however there is sufficient ground to relieve the defender, by setting aside the service altogether, in a proper action brought for that purpose.

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THE LORDS remitted the cause to the Lord Ordinary, in order that a reduction of the service might be brought by the defender.

Lord Ordinary, Gardenston. Act. Wight. Alt. Macanochie. Clerk, Robertson.  
C. Fgl. Dic. v. 4. p. 44. Fac. Col. No 168. p. 263.

1789. January 27. HUGH GORDON against ALEXANDER CLERK.

JOHN CLERK executed several special deeds of settlement, by which he conveyed to James, one of his younger sons, all his moveables, and also his whole heritage, but an heritable bond for L. 60, that being omitted in the enumeration contained in the different dispositions.

On the death of John Clerk his debts far exceeded his executry funds. Afterwards, when the heritable bond came to be paid, Alexander, the eldest son, joined with James in granting the discharge; the former denominating himself "the heir at law," and the latter "the disponent and executor" of John Clerk.

James having become insolvent, Gordon, a creditor of John Clerk's, sued Alexander for payment of the debt, as having in that manner incurred the passive title of *gestio pro herede*.

The defence stated was, that the debt had been conveyed in a general disposition to James, so that the discharging of it by Alexander was an inept and insignificant proceeding. It turned out, however, that no such general disposition had been made; and the Court finally "repelled the defence."

The defender having appealed to the House of Peers, "the cause was thence remitted to the Court of Session, without prejudice, with liberty to the defender to produce such proofs as he could, that James Clerk, at the date of the discharge, was entitled to the debt of L. 60."

When the cause thus came again into Court,

The defender pleaded; James Clerk, who was his father's executor, was also his disponent in heritage; while the defender, as heir-at-law, had right to the undisposed of security for L. 60. Now, as the executry funds fell far short of the personal debts, James was entitled to attach the subject falling to the heir-at-law, in order to extinguish those debts, that the right might be preserved to him, which, as a singular successor, he had obtained by his father's settlements. In the subject of the discharge, therefore, the defender had no real or substantial interest; and it would be hard to construe an act, which could not reasonably be done, with any view to his own profit, into the passive title of *gestio pro herede*. "Passive titles are not now so strictly attended to as they were formerly." Ersk. b. 3. tit. 8. § 83. Even at a more early period relief was

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An heir-at-law, who, as such, had concurred with a gratuitous disponent in heritage, in granting a discharge of an heritable debt falling to the heir, but from enjoying which he was precluded, by the disponent's claims of relief from the ancestor's debts, found not thereby to incur the passive title of *gestio pro herede*.