

was enough to make him liable for his father's debt, as he who had behaved himself as heir. See RES INTER ALIOS.

No 58.

Act. Stuart.

Alt. Nicolson & Gibson.

Clerk, Gibson.

Durie, p. 559. & 595.

1672. July 30.

FOWLIS against FORBESSES.

ROBERT FOWLIS Bailie of Edinburgh, having obtained decret against the three daughters and heirs-portioners of Mr William Forbes, advocate; one of them being married to Mr John Strachan, suspends, and *alleges* that she does not represent her father; and, albeit there be produced a right granted by her to Tolquhoun of her proportion of her father's lands, and of all right she can succeed to, and that he is obliged to relieve her of all debts she can be liable to, and hath given her bond for 3000 merks, yet there hath nothing followed thereupon; for neither is she infest as heir-portioner, nor Tolquhoun infest, nor hath he paid her any money, but suspended; *2do*, Albeit she were actually heir-portioner she can only be liable for the third part of the debt. It was *answered*, That she having disposed her father's heritage, and gotten bond for a sum of money therefor, she has unquestionably behaved herself as heir, and hath apprised Tolquhoun's land upon the 3000 merks; and therefore should be liable, not only for her proportion, but in so far as the benefit of her succession reacheth to, and she may pursue the rest for her relief, rather than put the pursuer, who is a stranger and a creditor, to divide his action or execution against many heirs-portioners.

THE LORDS found the suspender liable upon the rights betwixt her and Tolquhoun for her third part of this debt; as one of the three heirs-portioners; and declared, that if the pursuer using diligence, should not recover payment through their insolvency, the Lords would take it into consideration, how far the suspender should be liable more than for her third part.

Fol. Dic. v. 2. p. 31. Stair, v. 2. p. 114.

1675. January 20.

CARFRAE against TELFER.

A PERSON being pursued as representing a debtor, upon that passive title, that he had behaved himself as heir to the defunct, in so far as, being convened at the instance of another party, he had proponed a peremptory defence; the LORDS found, That the proponing of a defence upon payment or such like, was

No 59.

An apparent heir disposed his father's lands, taking the dispoinee bound to relieve him of debts, for which the dispoinee granted him bond for a certain sum. This was found a behaviour, though nothing followed thereupon; neither the apparent heir having been infest, nor the bond paid.

No 60.