moveable heirship.—It was *alleged*, That he could not have an heirship, being neither prelate, baron, nor burgess.—It was *answered*, That he had acquired the land condescended upon to himself in liferent, and to his daughter in fee; which was equivalent as if she had succeeded to him in the said lands.

No 20. his daughter in fee, is not a baron, and has no heirship moveables.

THE LORDS assoilzied from that title, in respect he had no right in his person, in which she could have succeeded. Some were of opinion, That if the right had born the ordinary clauses, and a power to dispone and wadset, notwithstanding the fee in the person of the daughter, that in law he ought to be considered and looked upon as a baron; being in effect, and upon the matter a fiar.

Clerk, *Hay*.

Fol. Dic. v. 1. *p.* 365. *Dirleton, No* 151. *p.* 60.

1674. *December* 22.

The HEIRS PORTIONERS of SEATON of Blair *against* SEATON.

No 21. No heirship moveables in the case of a person who died not infeft in lands, altho' he possessed them as heir apparent, and might have been infeft.

JOHN SEATON of Pitmedden did apprise the lands of Blair in *anno* 1638, and was thereupon infeft; after his death, James Seaton, his eldest son, did dispone the right of the lands to George Seaton, eldest son to the debtor, with warrandice; but in respect that the said apparent heir was never served heir nor infeft, Sir Alexander Seaton, the second son, now becoming apparent heir to his father, grants a bond, wherupon the rights of the lands of Blair are apprised from him as charged to enter heir, whereupon the heirs of George Seaton pursue Sir Alexander Seaton as representing his brother James Seaton, upon the clause of warrandice in James's disposition, and insist against him as behaving as heir to his brother by drawing of his heirship moveables, or getting a composition therefor, or intromitting therewith; 2*do*, As lucrative successor to him by a disposition granted by the said James his brother to the said Sir Alexander. The defender *alleged*, That the first member of the condescendence ought to be repelled; 1*mo*, Because the defunct was never infeft in any lands, and so could have no heirship, being neither prelate, baron nor burgess; 2*do*, The defunct was rebel, and his escheat was gifted and declared during his own life, long before the intenting of this cause, which doth purge the defender's intromission, who thereby is comptable to the donatar, and to no creditor, in the same way as confirmation of executors purgeth vitious intromission.

Both which the LORDS found relevant.

And as to the second member, the defender *alleged*, That it is not relevant, for albeit a disposition to an apparent heir who is *alioqui successurus* be *præceptio hæreditatis*, and infers a passive title, yet that is only extended to descendants and never to collaterals who are not apparent heirs, so long as descendants are

No 21. in *spe*, and therefore alienation of ward-lands to brothers or other collaterals infers recognition, but to descendants it doth not.

THE LORDS found that the disposition by one brother to the other, did not infer him to be lucrative successor. *See* PASSIVE TITLE.

Fol. Dic. v. 1. *p.* 365. *Stair, v.* 2. *p.* 295.

*** Dirleton reports the same case:

IT was found in the case, Sir Alexander Seaton of Pitmedden *contra* Seaton of Blair, that Pitmedden's brother, though he was apparent heir to a baron, he could not have a moveable heirship; because he was not actually *baro*. Some were of opinion, that as to that advantage and privilege of having a moveable heirship, it was sufficient that the defunct was of that quality, that he was one of these estates; seeing a person once *baro*, though he be denuded is *semper baro* as to the effect and interest foresaid; and a prelate, though for age he should become unable to serve, and demit, yet is still a prelate as to that effect; and the apparent heir of a baron, who has right and *in potentia proxima* to be a baron, and is peer to barons, and may be upon the assize of noblemen and barons, if he should be prevented with death before he be infeft, it were hard to deny him the privilege foresaid, that his heir should have his moveable heirship; and if his heir would have the benefit as to a moveable heirship, his intromission with the same ought to import a behaviour.

Reporter, *Lord Forret.*

Dirleton, No 209. *p.* 96.

1678. *November* 21. DOCTOR JAMESON *against* THOMAS WAUGH.

No 22.

A MARRIAGE dissolving within year and day *sine prole*, the LORDS found the gift given by the wife's friends fell to her executors, and by the husband's friends fell to the husband's executors, and the rest in *unoquoque genere* belonged to the heir, because he died infeft in an annualrent, (though it was only a trust) which made him *baro*, he never being denuded.

Fol. Dic. v. 1. *p.* 365. *Fountainhall, MS.*

1695. *December* 25. COCHRAN *against* The DUCHESS of HAMILTON.

No 23.
A lady who was daughter to an Earl and wife to a churchman,

ARBRUCHELL reported Cochran of Kilmaronock against the Duchess of Hamilton, in a reduction, the title whereof was an adjudication of the barony of Evandale, out of which Lady Margaret Kennedy had an heritable bond from the Duke for 50,000 merks, but was never actually infeft thereupon. *Alleged*,