No 10. that, from the words above cited, they should be equiparate, in being obliged to communicate eases. The words are indeed only intended to bring a familiar example of the manner in which the service was to be perfected. As the pursuer's reasoning is not warranted from the words of the statute, neither is it from the analogy of the law. An heir and executor are perfectly distinct; an heir is by *succession*, not by *office*; an executor, by his very name, denotes an *office*, and the same as *administrator*. Should it then be granted, that an executor in every case were obliged to communicate eases, which is not proved by the decision, which was not in the case of an executor *qua* nearest of kin; it would be perverting the analogy of law, to draw an argument from an *office* to a right of *succession*, to make one a trustee who neither by name nor the nature of the thing, can be considered as such.

Beside the general point, the pursuer *urged* this argument, That the defender had not taken a conveyance of the adjudications, but only a discharge. Now, as he had not these adjudications in his person, he could claim nothing under them; and as heir *cum beneficio*, he could not dispute with any creditor, while any part of the inventory remained with him; at least not till he should show the value thereof exhausted by lawful debts.

In *answer* to this, it was *alleged* to be the same, whether an heir take an assignation or discharge. An assignation in the person of a debtor is virtually but a discharge, because *confusione tollitur obligatio*; so that the use of an assignation is not to make up a title, but the same with a discharge, viz. for a proof and evidence, the heir has discharged and satisfied so many of the debts for which there was credit upon him, to the value of the inventory; and if he can instruct so many debts are satisfied by him as exhaust the full value, whether the instruction be by his taking assignation or discharge, it makes no difference.

"THE LORDS found, That an heir *cum beneficio inventarii*, is obliged to communicate eases." (See the next case.)

Fol. Dic. v. 1. *p.* 363. *Rem. Dec. v.* 1. *No* 65. *p.* 125.

1727. *July* 6. AIKENHEAD *against* RUSSEL.

No 11.
An heir *cum beneficio* who had improved the estate, was made to account at the improved value.

AN heir entering *cum beneficio inventarii* to an estate over-burdened with debt, but having afterwards, by industry, considerably improved the same, disponed a part for payment of a preferable creditor, more than equivalent to the original value of the inventory. Being thereafter attacked by other creditors, the question arose, If he must be liable according to the present worth of the subject, or only for what it was at his entry? It was *pleaded* for the heir, That he was not trustee, but proprietor; that the creditors had no real interest in the subject of the inventory; that the inventory was only designed as a method to fix a certain value beyond which the heir should not be liable; and ac-

cordingly, that if at any time the heir made this value furthcoming to the creditors he was at liberty to make of the estate what he would. It was added, that were this otherwise, it would put an effectual stop to the industry and improvements of heirs who enter by inventory, since no man will readily plant where another is to reap. THE LORDS notwithstanding found the heir liable to account according to the present value. *See* APPENDIX. No 11.

Fol. Dic. v. 1. *p.* 363.

1731. *February* 12. JOHNSTON *against* STRACHAN. No 12.

AN heir *cum beneficio* must pay or assign the inventory; and it is not sufficient that he offers to account for the value of the subject. *See* APPENDIX. See No 6. and No 7. p. 5335.

Fol. Dic. v. 1. *p.* 362.

1733. *June.* VEITCH *against* YOUNG and BURN. No 13.

AN heir *cum beneficio*, as he may pay *primo venienti*, so he may grant heritable bonds, though the effect be to prefer these creditors to the other creditors of the defunct. *See* APPENDIX.

Fol. Dic. v. 1. *p.* 361.

1733. *July* 6. GRAY *against* M'AUL.

No 14.
An heir *cum beneficio* was allowed to bring a judicial proof of the value of the estate, and to account at that value, so as to have the estate declared free; but there were only personal creditors.

AN heir entering *cum beneficio* brought a process against his predecessor's creditors, for ascertaining the value of the estate, to be proved by witnesses; concluding, that the estate might be declared to belong to the pursuer, and to be free and disburdened of the predecessor's debts, upon payment to the creditors of the proved value. It was yielded by the creditors, That in a personal action against the heir upon the passive titles, he is no further liable than *in valorem*, because so says the act of Parliament. But they *contended*, That as they had their option to insist personally against the heir, or to make their debts real upon the estate; if they chose the last, there was nothing in the act to bar them from making the best of their debtor's effects, by dividing the subject among themselves after they had made it their own by legal diligence, or by disposing of it at a public roup, and dividing the price. THE LORDS notwithstanding sustained process, and decerned in terms of the libel. This was in the case of personal creditors. *See* APPENDIX.

Fol. Dic. v. 1. *p.* 363.