

decreet of violent profits, and execution to follow thereupon, and *alleged* the practic betwixt William Hamilton burges of Edinburgh, and the Lady Samuelston, and Archibald Hamilton her son. THE LORDS found, that the heir of conquest should first be discussed *in quantum sufficebat valor terrarum appretiatarum*, and if these were all exhausted, that he should be no farther discussed *nisi in subsidium* of the general heir, who should be first discussed for all the rest of the decreet.

No 22.

*Fol. Dic. v. 3. p. 247. Haddington, MS. No 1363.*

1611. February 19.

FAIRLIE *against* HEIRS OF BLAIR.

No 23.

BURDENS lying upon tailzied lands, and bonds to infett men in the property thereof, or annualrents furth thereof, should be borne by the heir of tailzie succeeding to these lands.

*Fol. Dic. v. 1. p. 247. Haddington.*

\* \* See this case, No 83, p. 2746.

1615. June 23.

GORDON *against* M'DOWAL.

No 24.

IN an action betwixt Hugh Gordon of Grange and Fergus M'Dowal, THE LORDS found an execution proper against Grange as heir of conquest, without discussing the heir of line, because the contract was made upon the lands that pertained to the heir of conquest.

*Fol. Dic. v. 1. p. 247. Kerse, MS. p. 138.*

## S E C T. VI.

## What understood sufficient discussion.

1608. November. HUME of Renton *against* L. of RESTALRIG.

No 25.

ALEXANDER HUME of Renton pursued the heirs and executors of the umquhile Laird Restalrig, for the translation of a decreet obtained by him against Restalrig. It was *alleged* by the executors, that no process should be granted against them, till the defunct's heirs were first discussed, who had right by the

A defunct's creditor having discussed the heir general to the length of horning, he is

No 25.  
not obliged  
to comprise  
the lands, but  
may next in-  
sist against  
the executors  
or heir of  
tailzie or pro-  
vision.

defunct to certain annualrents, reversions, and tacks. It was *replied*, That the pursuer had charged and denounced the said heirs. The defenders *duplied*, that they should comprise their lands and tacks. Notwithstanding whereof, the LORDS repelled the allegiance, and found the denouncing of the heir as sufficient discussing of him. It was *alleged*, That the like was found in a pursuit against the Earl of Angus, and the daughter and heir female of umquhile Archibald Earl of Angus.

*Fol. Dic. v. I. p. 247. Haddington, MS. No 1492.*

No 26.

1627. *March 22.* EDGAR *against* CRAIGMILLAR'S HEIRS.

THOMAS EDGAR having obtained a decret against the umquhile Laird of Craigmillar's Heirs, superseding always the execution against the Heir male, till the Heir of line were first discussed, it was found that it was not a sufficient discussing of the Heir of line to have put her to the horn, and raised caption thereupon, seeing she had land and heritage, which behoved to be comprised likewise.

*Fol. Dic. v. I. p. 247. Spottiswood, (HORNING.) p. 148.*

\* \* \* Durie reports the same case:

A BOND being registrate at the instance of Thomas Edgar against the heir of line, and also against the heir male and provision of umquhile the Laird of Craigmillar, maker of the bond; and the heir of line being in the decret of registration ordained to be first discust, before the heir of tailzie should be charged, the party having charged the person who was in blood to the heir of line, against whom the bond was registrate, as lawfully charged to enter heir, and having denounced him rebel, thereafter he charges the heir of tailzie; who suspends upon this reason, that the heir of line was not sufficiently discust by horning, seeing there was right competent to her as heir of line, which might be comprised from her, as charged to enter heir, or adjudged to the creditors, if she should renounce to be heir: This reason was found relevant, for the LORDS found, that the putting of the person, who should be heir of line, to the horn, was not a sufficient discussing of her, whereupon the party might come against the heir of provision; but found, that her right ought to be discust by comprising, or adjudication, or her person by caption, seeing she renounced not to be heir.

Act. \_\_\_\_\_.

Alt. *Lawtie.*

Clerk, *Gibson.*

*Durie, p. 293.*