

No 17.

. Spottiswood reports the same case :

MARGARET AYTON, as apparent heir of line to umquhile Mr Andrew Ayton her brother, called for exhibition of writs and evidents of Kinglassie, wherein her brother died last vest and seased. *Excepted*, No exhibition at her instance as apparent heir of line, because by a procuratory and instrument of resignation following thereupon, the lands were resigned by the said Mr Andrew for new infestment to be given to himself and his heirs male, &c. by which resignation she being secluded from the right and benefit of succession to these lands, she could not call for exhibition of the writs thereof. *Replied*, Not relevant against the exhibition, especially no infestment having followed upon the resignation. *Duplied*, The reason why exhibition is sustained at the instance of an apparent heir, being to the effect he may advise whether he will enter or not, the pursuer can have no such pretence here, in respect she is altogether secluded by the said resignation as long as the procuratory and instrument stand unreduced. 'THE LORDS repelled the exception *contra exhibitionem*, in respect infestment had not followed upon the resignation.'

Spottiswood, (EXHIBITION.) p. 124.

. This case is also reported by Auchinleck :

MARGARET AYTON, as apparent heir of line to umquhile Mr Andrew of Kinglassie, and Martin Corstorphin her spouse, for his interest, pursue David Ayton for exhibition of the evidents of the lands of Kinglassie, pertaining to the said umquhile Mr Andrew. It was *alleged*, No exhibition at her instance as apparent heir of line, because by a procuratory and instrument of resignation following thereupon, the said umquhile Mr Andrew resigned the lands for new infestment to himself and his heirs-male, whereby the pursuer is excluded from any interest. To which it was *replied*, That notwithstanding of the procuratory, yet no infestment followed thereupon, and so cannot stay the exhibition. THE LORDS repelled the exception in respect of the reply.

Auchinleck, MS. p. 70.

No 18.

An apparent heir found entitled to call an intruder to account, in or-

1637: *March 16.*

HUME against L. BLACKADER.

ONE Hume, son to George Hume of Eccles, pursues the Laird of Blackader, to make count and reckoning of the estate, intrusted to him by his umquhile father, for defraying of his debts, that he might advise therewith, and consider if he should enter heir to his umquhile father or not, who *alleging*, That this

process for count and reckoning, ought not to be sustained at the instance of an apparent heir, being only proper to one served heir, and that it was a novelty to sustain it otherways, the LORDS repelled the allegiance, and sustained process at the apparent heir's instance, for the effect foresaid.

Act. Craig.

Alt. Belsbes.

Clerk, Gibson.

Fol. Dic. v. 1. p. 285. Durie, p. 838.

No 18.
der to determine, by the balance, whether to enter or not. See No 20.

1665. January 12.

STEIL against THOMAS.

CATHARINE STEIL, as apparent heir to her father and goodsire, pursues John Thomas for exhibition of the writs of certain tenements *ad deliberandum*. In which action there being a defence proponed, that her father and her goodsire were denuded, and the defender and his predecessors had possest the said tenements as heritors these 40 or 50 years bygone, the LORDS, before answer, ordained the defender to produce such writs as he had, to prove that they were denuded, and according to the ordinance the defender produced only some comprisings for very small sums; which sums, the comprisers and others having right from them, did receive, and were fully satisfied by their intromission before the legal expired, as was alleged. Likeas, the evidents pertaining to the pursuer's predecessors, were in the hands of Alexander Yule their uncle, and after his death John Meikle taylor meddled with them, from whom the defender without the pursuer's knowledge or consent received them.

THE LORDS ordained the defender *ante omnia* to exhibit all such writs as he had concerning the tenements libelled, reserving all defences against the delivery.

Fol. Dic. v. 1. p. 284. Gilmour, No 123. p. 90.

No 19.
In an exhibition *ad deliberandum*, the defender produced comprisings to show that the pursuer's predecessor was denuded. It was alleged they were paid. The Lords ordained the defender to exhibit, reserving his defence against delivery.

1669. December 7.

WILLIAM HOGG against JOHN STRAITON.

ROBERT YOUNG having made a disposition of some tenements of lands to John Straiton, upon a back-bond, that he being satisfied and relieved of his cautioneries wherein he was or should be engaged for the said Robert, that his right should be null and void, the said Robert having subscribed an assignation in his own time blank, which was lying by him the time of his decease, his son and apparent heir did fill up Robert Young's name therein, who transferred the same in favours of William Hogg, who thereupon pursued a count and reckoning against Straiton, concluding to hear and see it found, that his right was null, it being satisfied by intromission. It was *alleged* for the defender, That

No 20.
The Lords refused to sustain an action of count and reckoning, at the instance of an heir who raised the action, that upon a view how the balance stood,