

1632. *November 24.* ANNAND *against* ANNAND.

No 43.

An apparent heir proponing improbation against a bond, for payment of which he was pursued; it was found, that it could not be received *hoc loco*, the writ being registered, but action of improbation was reserved. This is the import of this case, and the two following compared together.

IN a pursuit by one Annand, as executor to his father, for payment of a sum against the defender, as lawfully charged to enter heir to his father, debtor of the sum, conform to his bond; the defender offering to renounce where he was convened as lawfully charged, &c.; and, *2do*, alleging, under protestation, that he past not from his exception, and offer to renounce to be heir; that he offered to prove, by this pursuer's own oath, that the bond was blank in the sum all the time of the lifetime of the creditor, and was so found by this pursuer after his decease, and was since filled up by himself; and the pursuer *contending*, That he cannot be heard both to propone this exception and also to renounce; THE LORDS found, that if the defender would offer to renounce to be heir, he could not be heard to propone any other exception to elide the pursuit; and if he would propone any exception for eliding thereof, that *in casu* he could never be heard, neither at that same time, nor in that process, nor in no time thereafter to renounce; and so they permitted to his option to elect any of the two; but found, that he could not propone and use both; for, if he succumbed in proving of the exception, or any other peremptory exception, which might elide the cause, he could not use the renunciation, having succumbed; albeit the renunciation was proponed at that time when the peremptor was proponed, which I think singular.

Act. Baird.

Alt. Gilmore.

Clerk, Gibson.

*Fol. Dic. v. 1. p. 173. Durie, p. 653.*1633. *February 16.*KER *against* KER.No 44.
Found as
above.

JAMES KER having pursued Mark Ker for payment of a sum contained in a bond, which was registrate by compearance and consent of procurators, and he offering and taking a term to renounce, being charged to enter heir to the granter of the bond, and pursued *eo nomine*, it was found, that he might pass from that offer to renounce, and propone another exception, notwithstanding of that term assigned to him; and thereafter, he proponing improbation of the bond libelled, it was found, that this exception of improbation ought not to be received against a bond registrate, but reserved him action to pursue improbation thereon, albeit the registration was only by a naked consent, and that the clerk had the bond then ready, to be produced in this same process, being recently only done.

Clerk, Gibson.

Fol. Dic. v. 1. p. 173. Durie, p. 675.