

S E C T. II.

Who liable to Exhibit?—No interest to call for Writs where the Defunct was Denuded.—Ought to be no conclusion for Delivery, nor for Count and Reckoning.

1626. July 1. NISBET *against* WHITELOW.

EXHIBITION is the proper conclusion of this process, but not delivery, which an heir cannot insist for without being served.

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

No 16.

*** See this case, No 2. p. 3982.

1632. February 15. AYTON *against* AYTON.

MARGARET AYTON, as apparent heir of line to umquhile Mr Andrew Ayton of Kinglassie her brother, pursues ——— Ayton, half brother to the defunct, for exhibition of the writs of the said lands of Kinglassie, wherein the defunct died infest; and the defender *alleging*, that she had no interest to pursue this cause, because the defunct before his decease had, by a procuratory of resignation, whereupon instruments of resignation were taken, in the defunct's own lifetime, resigned the saids lands, for new infestment, to be taken to himself, and the heirs-male to be gotten of his own body; which failing, to his brother and the heirs of his own body, and to the other persons provided in the said procuratory of resignation, whereby the pursuer was altogether secluded from that succession, and so she could not call either for delivery, or exhibition, of the writs. THE LORDS repelled the allegiance against the exhibition, in respect no infestment, nor real right was expedie in the defunct's lifetime, nor sinsyne, upon the said resignation, so that this being an act begun, but not consummate, the LORDS found the heir of line might crave production of the writs, that she might advise, if she would enter heir specially in these lands; and after production, the LORDS reserved this exception upon the resignation to be discussed against the delivery.

No 17.
An heir has right to call for the writs of his predecessor's lands, though the predecessor had resigned them for new infestment in favour of the defender, the infestment not being expedie. See No 13.

Act. Barclay.

Alt. ———.

Clerk, Gibson.

Fol. Dic. v. 1. p. 283. Durie, p. 621.

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