No 4. of his, the pursuit whereof cannot be sustained, as when the apparent heir to the vassal deceased is convened for his own marriage; for in that case, he cannot be otherwise convened, seeing if he had been entered or infeft before the other vassal's decease, his marriage would not have fallen; but now the apparant heir being dead unentered, and yet his marriage craved, the process cannot be sustained therefor against none, but some called to represent him, either as heir, or charged to enter heir; seeing the defender, who is convened as apparent heir, his own marriage is not craved, but the marriage of the other apparent heir deceased.—THE LORDS repelled this allegeance, and sustained the transferring, and process pursued thereupon, against the said apparent heir, without necessity that he should be either heir, or charged to enter heir to that apparent heir, whose marriage was sought; in respect that this pursuit was real against the ground, and that the pursuer sought no personal action, nor execution thereupon against the defender, but past therefrom. *See* PERSONAL and REAL.

Act. *Advocatus & Craig.* Alt. *Nicolson & Heriot.* Clerk, *Gibson.*
Fol. Dic. v. 1. p. 130. Durie, p. 778.

1638. *December* 11. FINLASON *against* WEMYSS.

No 5.
An order of redemption may be used against an apparent heir, without necessity of a charge to enter heir.

THE lands of ——— being wadset to Alexander Wemyss and Mr John Wemyss, under reversion; which reversion being comprised by Alexander Finlason, creditor to him who gave the wadset; whereupon order of redemption being used against the said umquhile Alexander Wemyss in his own lifetime; who deceasing before declarator, thereafter summons and declarator of redemption is raised against the eldest son, and apparent heir of the said umquhile Alexander Wemyss, upon the same order used against umquhile Alexander, before his decease; wherein the defender compearing, *alleged*, That this order could not be sustained and used against Alexander, who is now dead, to be declared against his apparent heir, against whom it was not used, but that he ought to be of new warned, and ought to be charged to enter heir to his father for that effect.——THE LORDS repelled this allegeance, and found, That the order used against the father, who was dead since the using thereof, might be lawfully craved to be declared against his apparent heir; and that there was no necessity of any new order to be used against him, or that he needed to be charged to enter heir, seeing redemptions might be used from apparent heirs. *Item*, The order being quarrelled, because it was not used conform to the order agreed upon, and prescribed in the reversion, which appointed premonition to be made at the parish church upon a Sunday before noon, in time of Divine service, and that the reversion should then there be read; and the other *replying*, That he had done more; for that clause being appointed only, that the party might be certiorate of the deducing of the order, he had made him more certain, by premonishing

No 5.

him personally apprehended, which was a more assured way of knowledge than if it had been done at the kirk. This allegeance was also repelled, in respect of the personal premonition; neither was it respected, that the defender alleged, that reversions are *stricti juris*, and that conditions agreed upon betwixt parties ought not to be changed; and 3*dly*, It being *alleged*, That the order could not be sustained, because it was not used by a procurator, having power of the party to use the order, as is ever observed in all the like cases; but it is only used by a messenger, by virtue of the Lords' letters, passing upon a bill given in to the Lords, at the instance of the party who comprised, whereby he craved warrant to the messenger, to make the said premonition, and use the said order; which being sought by the party, and granted by the Lords, is against all form and practice, and ought not to be sustained, but must be done *periculo impetrantis*;——THE LORDS also repelled this allegeance, in respect the party ratified and approved the order, and allowed the same: And the LORDS found, That they would not cast nor avert the order for this alleged defect, nor for any other of the alleged defects in the foresaid allegeances; but this is not in use to be done in redemptions, and I remember not of any other used in this manner. *See* REDEMPTION.—DEATH.

Act. *Nicolson* & *Sibbald.* Alt. *Rollock.* Clerk, *Gibson.*
Fol. Dic. v. 1. *p.* 130. *Durie, p.* 866.

1667. *January* 2. OLIPHANT *against* HAMILTON of Kilpoty.

No 6.
A poinding of the ground is competent against an apparent heir, without a charge to enter.

WILLIAM OLIPHANT having obtained a decreet for poinding of the ground against Hamiton, he suspends on this reason, That he was neither decerned as heir, nor possessor, but as apparent heir to the heritor, and was never charged to enter heir.

THE LORDS repelled the reason, and found this action, being real, was competent against the apparent heir without a charge.

Fol. Dic. v. 1. *p.* 130. *Stair, v.* 1. *p.* 422.

1667. *June* 26. MR DAVID DEWAR *against* PATERSON.

No 7.
Reductions, declarators, and other real actions, which have no personal conclusion against the heir, require no general charge to enter heir

MR DAVID DEWAR pursues a transference of a count and reckoning which formerly was depending betwixt him and umquhile Henry Paterson, and craves it may be transferred against Henry the heir, and proceed where it left.—It was *alleged* for the defender, absolvitor, because the citation was given before year and day, after the defunct's death, contrary to the defender's privilege of his *annus deliberandi*, by which he hath *inducias legales*, and cannot be forced to own or repudiate the heritage.—The pursuer *answered*, *first*, That *annus deliberandi* is only competent, where the apparent heir is charged to enter heir,