

## No 38.

non-entry given to an apparent heir, *intra annum deliberandi*, found not to entitle the superior to the full rent of the vassal's lands from the citation, although the day of compareance was after elapsing of year and day.

charged Seabegs by a first and second precept out of the Chancery, to enter and infest him, upon a charter presented with the bygone feu-duties, and a bond to do what further should be found needful; Seabegs suspended after the last requisition, upon this ground, That the offer of the feu-duties was not sufficient, in respect he had raised a declarator of non-entry, which entitled him to the full rent of the charger's lands since the citation, and till that was paid, the suspender was not bound to enter him vassal.

*Answered* for the charger; His superior could have no right to the full rent, since the citation in the declarator of non-entry; because the summons was raised within the *annus deliberandi*.

*Replied* for the suspender; His vassal was cited within the year, but the day of compareance was after elapsing thereof, which is sufficient, Dewar *contra* Paterson, No 31, p. 6873. As albeit the act of parliament dischargeth summons to proceed upon charges to enter heir until after elapsing of forty days, yet uniform practice sustains the raising and executing charges to enter heir, and summons thereon *simul et semel*, when both the forty days and the days of the summons are suffered to expire before calling of the summons.

*Duplied* for the charger; If a superior might compel his vassal to enter within the year under the pain of a year's rent, he the vassal would thereby have no benefit by the *annus deliberandi*, but behoved to subject himself rashly to his predecessor's debts, to satisfy the unreasonable desire of his rigorous superior. The practick cited for Seabegs makes against him; for there the LORDS found no process till a new citation, in respect the former was given within the year.

THE LORDS repelled the reason of suspension, and found the letters orderly proceeded.

*Fol. Dic. v. 1. p. 467. Forbes, p. 437.*

1712. February 8.

MR ANDREW RAMSAY of Abbotshall, *against* Mr JOHN LAUDER younger of Fountainhall, &c.

## No 39.

A party in a pursuit for constituting a debt against four heirs-portioners, called them all; but one of them died *pendente processu*. The Lords refused to grant a diligence to call the next heir.

MR ANDREW RAMSAY, now of Abbotshall, having obtained an assignation from Squire Law, to a debt owing him by the deceased Sir Andrew Ramsay of Abbotshall, and resolving to adjudge, to fortify his disposition of these lands, he charges Mr John Lauder younger of Fountainhall, Lady Monkton, Lady Whitefield, and James Forbes younger of Thornton, as the four heirs-portioners of line to the said Sir Andrew, to enter heirs; and during the dependence of the process, the said James Forbes dies, which stopt farther procedure till his next brother were called, as representing Catherine Ramsay, his mother, one of the heirs-portioners; whereupon the said Mr Andrew gave in a bill to the Lords, representing the said James's death, and that he cannot proceed against

the other three till one be cited to represent the said Catherine, seeing all the four must be in the field, and therefore craved, seeing he could not divide his process, and that he could not be obliged to raise a new one, because of this unforeseen emergent of one of the heir's deaths, that the Lords would grant diligence to cite the next eldest son of Thornton *cum processu*, and his father as tutor and administrator of the law to him, that he be not put to a separate process against him, or to wait the *annus deliberandi*, ere he can be cited; and seeing the Lords, by the late act of sederunt in November last, have declared, that if the debtor, or his apparent heir, or other defenders, shall die, the process shall stop no longer than till the next apparent heir be cited on a diligence, without waiting the outrunning of the *annus deliberandi*, and that the parity of reason was the same in that case. But the Lords thought there was a great difference betwixt processes of sales and ranking, to which the act of sederunt only related, as being summary processes, and the constitution of a debt against apparent heirs, which was the present case; and remembered that, in the case of Sir William Nicolson, the creditors were twice stopped by the death of two apparent heirs, and put to stay the year of deliberation; and, on this account, they refused the said Mr Andrew Ramsay's bill, and would give him no diligence to call the next heir till the year and day were run.

*Fol. Dic. v. 1. p. 468. Fountainball, v. 2. p. 720.*

1713. November 19.

EARL OF DALHOUSIE *against* LORD HAWLEY and His CHILDREN.

THE LADY HAWLEY having died during the dependence of an action of reduction and declarator, at the instance of the Earl of Dalhousie, against her, the LORDS refused to decern in a transference of the said action against the Lady's son and apparent heir *intra annum deliberandi*.

*Fol. Dic. v. 1. p. 468. Forbes, MS. p. 2.*

1749. February 25. STEWART in Towiemore *against* ANDERSON.

THE deceased Robert Stewart in Towiemore, having contracted great debts, a scheme was laid by his friends to transact the debts, whereof eases were expected, and Alexander Anderson and others undertook the trust. Accordingly, Anderson transacted the debts in his own name; but, as no writing had intervened, his son pretending ignorance of his father's engagements, refused to communicate the eases.

No 39.  
till the year  
and day were  
run.

No 40.

No 41.  
Within the  
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can be taken  
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