

No 22. of Barskeoch against Alexander M'Clamroch, decided 2d August 1758.*
THE LORDS adhered.

For Hamilton, *Macqueen.*

For Blackwood, *Rae.*

J. C.

Fol. Dic. v. 3. p. 316. Fac. Col. No 48. p. 101.

SECT. III.

Annus Deliberandi.

1609. November 17. FAUSYDE against ADAMSON.

No 23.
An apparent heir may be charged to enter any time after his predecessor's death; but no summons can be executed against him till the year and day expire.

GEORGE FAUSYDE charged Adamson to enter heir to umquhile James Adamson of Cowthripill his father; thereafter pursued him for translation or implement of a contract. It was *alleged*, That the pursuer should have no process; because, by act of Parliament, it was provided, that no process nor charges should be used against an apparent heir while year and day were past after his father's decease, and the charge was used, being before the expiring of year and day. It was *answered*, That the act of Parliament was only militant in the pursuit of actions before the expiring of year and day; and that, albeit this pursuer's charge was raised and executed within year and day, he had not intended his action while after year and day.—THE LORDS remembering that they had so decided the Laird of Cluny against Errol, found the charge lawful within year and day, albeit they would not authorise any pursuit moved within year and day; and declared they would observe this as a practice in time coming.

Fol. Dic. v. 1. p. 467. Haddington, MS. No 1642.

1611. February 19. FAIRLIE against BLAIR'S HEIRS.

No 24.

A CHARGE to enter heir being raised and executed within year and day, it is sufficient if the last day of the forty was after the year and day.

Fol. Dic. v. 1. p. 467. Haddington.

*** This case is No 83. p. 2746.

* Not Reported.