

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* WHITELAW.

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.