

No 27.

1627. February 28. LIVINGSTON *against* FULLERTON.

ONE Livingston seeking decree to be transferred in one William Fullerton, as lawfully charged to enter heir to his father, it was *alleged*, That the summons was raised before year and day had past after the defender's birth, though his father had died year and day before; for the child was *posthumous*. It was found, that he should have waited year and day after the child's birth before he had raised summons upon his charge.

Fol. Dic. v. 1. p. 467. Spottiswood, (HEIR.) p. 137.

No 28.

1628. June 19. M'CULLOCH *against* MARSHALL.

THE heir may be charged to enter heir at any time after his father's decease; but no summons may be executed against him that is charged to enter heir, while year and day after his father's decease be expired. But it is not necessary to delay the action 60 days after the year and day be expired.

Fol. Dic. v. 1. p. 467. Auchinleck, MS. p. 2.

* * * Durie's report of this case is No 2. p. 2168.

No 29.

1631. July 14.

BLAIR *against* BROWN.

If an apparent heir renounced, a decree *cognitionis causa*, and adjudication, may be obtained within the year.

THE deceased Alexander Brown being addebted in a sum to Alexander Blair writer, he pursues this Brown, as lawfully charged to enter heir to the said umquhile Alexander, for payment; and the said Brown compearing, and producing a renunciation subscribed by him, whereby he renounced to be heir; whereupon the pursuer obtains decret *cognitionis causa*, that he might have execution *contra hæreditatem jacentem*; and thereupon pursues an action of adjudication; wherein the rest of Alexander Brown's creditors compeared, and *alleged*, That the pursuer's decret foresaid, obtained upon the defender's renunciation, was null, because it was obtained before the expiring of year and day after the debtor's decease, against the 76th act, Parl. 6. Ja. 4. and 106th act, Parl. 7. Ja. 5. which prohibits any such process to be granted before year and day be expired; and against the act of session made in *anno* 1613, which gives liberty to raise charges within the year, but not to intent summons. This allegiance was repelled, and the process and decret sustained; for, by the party charged his renouncing to be heir, by that voluntary deed he had renounced that benefit and liberty which he had by the acts of Parliament, to deliberate if he would be heir, seeing he resolved to renounce; and that renunciation behoved to be as effectual to the creditor as if he had retoured him.