

like reason after the decreet, and where the pursuer's diligence had so far proceeded as the length of a decreet; and it were an unnecessary and sumptuous formality to put the lieges to any such diligence, the pursuer having no necessity to call except the superior in a summons of adjudication, but *dicis causa*; and having now called the next apparent heir-male, and being content that he debate against the decreet, in the same way and manner, as if he were yet in the first instance; especially considering there are comprisings led at Clackmannan's instance, for vast sums against the said lands, which the pursuer will not be able to redeem within year and day, unless his diligence be sustained. THE LORDS repelled the allegiance, sustained process, and adjudged; but prejudice to the defender *intra tempus deliberandum*, being served heir to his predecessors, and ten years thereafter to redeem, as accords of the law.

Newbyth, MS. p. 48.

No 30.

1667. June 26.

DEWAR against PATERSON.

No 31.

IN a transference of count and reckoning against an apparent heir, there was found no process, both the citation and day of compearance being within the *annus deliberandi*.

Though reductions, declarators and such like real actions require no charge to enter heir, they are not competent within the year of deliberation, because in these the heir cannot defend without behaving as heir.

Fol. Dic. v. 1. p. 467. Stair.

*** This case is No 7. p. 2171.

1677. February 6.

HAMILTON against BONAR.

No 32.

THE LORDS found, that apparent heirs may be pursued, as behaving before the year expire; seeing *eo ipso* that *miscent, adeunt passive*; and as to that pretence, that they would be wronged if it should have appeared by the probation that they did not meddle; it is of no weight, seeing the LORDS may modify expenses.

Fol. Dic. v. 1. p. 468. Dirleton, No 450. p. 219.

*** Stair reports this case:

JEAN LOCKHART and Hamilton of Raploch her spouse, pursue James Bonar as representing his brother, for payment of bonds granted by his brother to her, and insist against him as behaving as heir, who *alleged* no process, because this pursuit was *intra annum deliberandi*. It was *answered*, That *annus deliberandi*,

An apparent heir intromitting with moveable heirship and rents of land, within year and day after the defunct's decease, may be pursued for his debts, *et non habet animus deliberandi intra annum et diebus.*