

No 20.
he might de-
termine whe-
ther to enter
or not. See
No 18.

the translation made to the pursuer was to the behoof of the apparent heir, who had renounced to be heir to that same defender; and that that assignation being left blank by his father, it could be no title whereupon to pursue, it being filled up as said is. THE LORDS did sustain the defence to be proven by Hogg's oath, and the apparent heir's; notwithstanding it was *replied*, that the apparent heir might pursue a count and reckoning *ad deliberandum*, which the LORDS found he could not do in that case, without some right made to him, or that he were served heir, apparent heirs having only right *ad deliberandum* to pursue exhibitions.

Fol. Dic. v. 1. p. 285. Gosford, MS. No 213. p. 86.

No 21.
Found as
above.

1671. June 22.

LESLIES *against* JAFFRAY.

LESLIES pursue Alexander Jaffray and others for producing of writs, and counting anent a wadset right, as being satisfied by intromission; and that as apparent heirs, *ad deliberandum*.

THE LORDS refused to sustain the summons for count and reckoning, but only for exhibition; albeit there was a practise produced, observed by Durie on the 16th of March 1637, betwixt Hume and Hume of Blackadder, No 18. p. 3996; wherein count and reckoning was sustained at an apparent heir's instance, the custom having been ever since contrary, upon this ground, that no party should be troubled to count at the instance of those who, when the count was closed, cannot exoner them, and yet may put them to make *litis-contestatio* and probation in the cause.

Fol. Dic. v. 1. p. 285. Stair, v. 1. p. 738.

1680. February 7.

THOMAS BRUCE *against* JANET PETTY, and COCHRANE, her Husband.

No 22.

AN apparent heir pursues an exhibition *ad deliberandum*. THE LORDS sustain this defence against it, that the defunct had disposed the fee of the tenement irredeemably, and so the pursuer had no interest; though he alleged it was on death bed, the reduction whereof was reserved to him, and this defence was received *postconclusum in causa*.

Fol. Dic. v. 1. p. 284. Fountainball, MS.