

1629. *June 25.*JOHN AUCHTERLOUNY *against* WILLIAM and ANNAS GUTHRIES.

No 29.

An heir of line having renounced, it was found, that the heir of provision might be pursued, without farther discussion of the heir of line.

JOHN AUCHTERLOUNY obtains a decret of registration of a bond made by umquhile Alexander Guthrie for 100 merks, against William Guthrie, heir of tailzie to the said umquhile Alexander, in which action of registration, Annas Guthrie, heir of line to the said umquhile Alexander, was called and assoilzied, in respect she renounced to be heir, and the registration only ordained against her *cognitionis causa*, to have execution *contra hereditatem jacentem* upon the said decret of registration. The said William Guthrie, heir of tailzie, is charged by the creditor; he suspends upon this reason, that the heir of line should be first discuss; and although both the heir of line and of tailzie may be pursued in one libel, yet the heir of line ought first to be discuss; and although she renounces, yet he might pursue for adjudication from her, of such rights as fell to her as heir of line; and, till the charger follow out this course, he could not charge the heir of tailzie. To which *answered* the charger, having convened the heir of line, and she having renounced, it was in his option, either to pursue the heir of tailzie or seek adjudication. THE LORDS found the letters orderly proceeded against the heir of tailzie, but ordained the charger to make assignation of that right to the heir of tailzie, that he might crave adjudication for his relief of the rights pertaining to the defunct, whereunto the heir of line might succeed.

Fol. Dic. v. I. p. 248. Auchinleck, MS. p. 3.

1666. *December 18.*A. *against* B.

No 30.

Found in conformity with Cowan against Murray, No 28. P. 3577.

IN a process against an heir of provision, it was *alleged*, That the heir of line ought to be first discuss; it was *replied*, That the heir of line was convened and renounced; and it being *duplicated*, That the estate belonging to the heir of line, and whereto he should have right if he were served heir, ought to be discuss,

THE LORDS found, no process against the heir of provision, until the heir of line was discuss; and that the renunciation of the heir of line was not sufficient; but that the creditor behaved to proceed to adjudication *contra hereditatem jacentem*, belonging to the heir of line.

Fol. Dic. v. I. p. 248. Dirleton, No 69. p. 29.

No 31.

Found in conformity with Auchterlouny against Guthrie, No 29. P. 3578.

1678. *June 22.*CRAWFURD *against* The HEIRS of LINE of the LAIRD of RATTAR.

THOMAS CRAWFURD having pursued the heirs of line and provision of the Laird of Rattar, for payment of a debt of their father's, and both having com-

peared, the heir of line offered to renounce, and at the term produced his renunciation, and the cause coming to be advised, the pursuer craved sentence against the heirs of provision, who *alleged* no sentence, because the heir of line was not sufficiently discussed as to all the passive titles, but only is charged to enter heir. The pursuer *answered*, That the heir of provision having appeared, and neither having condescended or instructed any heritage to be affected, nor craved that the heir of line's oath might be taken thereupon *in intio litis*, he cannot now *post conclusionem in causa* put the pursuer to a new litiscontestation and probation against the heir of line.

Which the LORDS sustained, and found the pursuer obliged to discuss the heir of line no further; but at the desire of the heir of provision, they admitted protestation, that adjudication might proceed, in respect of the renunciation and liquid bond produced, without any other decret *cognitionis causa*, and ordained the pursuer upon payment to assign all to the heir of provision, that he might take his relief against the heirs of line.

Fol. Dic. v. 1. p. 248. Stair, v. 2. p. 624.

1708. July 23.

CAPTAIN ALEXANDER STRAITON *against* the EARL OF LAUDERDALE.

IN a pursuit at the instance of Captain Straiton, as having right by progress to a debt due by the Duke of Lauderdale to Sir Andrew Forrester, against the Earl of Lauderdale, as heir-male of tailzie to the Duke his uncle for payment,

Answered for the defender; He cannot be insisted against as heir-male, till the Lord Yester, the present heir of line, be discuss, and his lands adjudged, if he renounce, conform to the 69th decision observed by the Lord Dirleton, December 8th 1666, No 30. p. 3578.

Replied for the pursuer; In a former process the deceased Marchioness of Tweeddale, the first heir of line, renounced, and the pursuer, upon her renunciation, adjudged.

Duplied for the defender; He not being called in the former process, it is still competent to him now to object, That the Lord Yester, the present heir of line, is not discussed; for his mother's renunciation doth not hinder him to represent, when he thinks fit. Besides, some estate belonging to the Duke, was left out of the adjudication that followed upon the renunciation.

THE LORDS found no necessity to discuss the Lord Yester the present heir of line, if the former heir renounced, and an adjudication was led upon her renunciation. But sustained the defence upon an estate not adjudged from the former heir of line.

Fol. Dic. v. 1. p. 248. Forbes, p. 271.

No 31.

No 32.
Not necessary to discuss a present heir of line, before the heir male and of tailzie, if the former heir of line renounced, and an adjudication was led upon the renunciation, unless some estate belonging to the defunct was omitted out of the adjudication.