

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.

No 31.

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 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.