

1765. *July 23.*JOASS *against* LORD BANFF.

IN this case the Lords found that the rents due at the time of the death of the apparent heir belonged to his executors and not to the next heir, contrary to what had been decided in the case of the estate of *Rosehall*; *dissent*. Auchinleck, Ale-more, and it carried only by a majority of one and the President.

It was observed by Auchinleck, that the succeeding heir paying the nonentry-duties for all the years of the intermediate heir's possession, plainly shows that, by construction of law, the whole intermediate rents are understood to belong to the heir entering; and the exception which by practice has been introduced, contrary to principle, has gone no farther than to give to the heir-apparent the rents which he had actually uplifted, or for which he has taken decreet, or which his creditors have arrested or confirmed after his death. This last was going very far; but it would be carrying the thing much farther, if it should be found that not only the creditors of the apparent heir, but also his executors, should carry off those rents.

*N.B.*—I think that the right of the apparent heir to the rents should be considered like that of a *bona fide* possessor, which is only made effectual *perceptione*.

1765. *August 8.* CAIRNCROSS *against* HEATLY and MYRTLE.

THIS was a question concerning the succession of the estate of Hillslop. The defenders in this process had got themselves served heirs-portioners to the late ladies of Hillslop, as being connected to them by females, and upon their service they got possession of the charter-chest of the family. The pursuer of this process, William Cairncross, insisted in a reduction of this service, alleging that he was connected to the ladies by the male line, and therefore was preferable to the defenders. A proof was allowed him, which coming to be advised, he insisted that, in order to support his proof by witnesses, he ought to have the inspection of the charter-chest and all the papers belonging to the family, which was in the possession of the defenders; which accordingly the Lords allowed upon this ground,—that it was a competition of heirs about a succession, and that although the defenders had got into possession by getting themselves first served, yet the case was to be considered as if they had been all competing upon brieves before the inquest, and they thought the case was very different from the case where the right to the lands is attacked, not the possessor's right as heir.

*N.B.*—This case comes pretty near the case of *Douglas*, where the right to the estate, as it stood in the predecessor, was not attacked, but his right to succeed; and yet it was found, in the last resort, that the pursuers who claimed to be heirs of the estate were not entitled to a general exhibition.