No 37.

Replied; No argument from the strictness of interpretation, belonging to statutes that confer privileges, can militate against the heir. If the statute of 1540 introduced a privilege, it was not in favour of heirs, but in direct opposition to them; being in behalf of creditors alone, who formerly had no means of attaching the heritage of debtors whose heirs remained unentered. Nor is there any difficulty in ascertaining, either, in general, the time requisite to obtain information from any corner of the world, or the particular fact when such intelligence has been actually received; after which there is nothing farther to be required. It is not an infinite variety of different periods, but the single space of year and day, to which the attention of the Court will be called.

Observed on the Bench; It would be highly inexpedient and unjust, were the effect of the diligence of creditors to depend on the causual circumstance of the particular time necessary for communicating notice of the predecessor's death to the heir, whose place of residence may be unknown to the creditors.

THE COURT 'adhered to the interlocutor of the Lord Ordinary on the bills.' Afterwards a reclaiming petition for the heir was refused, without answers.

Lord Ordinary, *Stonefield*. For Henderson, *G. Fergusson*. Alt. *Crosbie, M'Cormick*.
S. *Fac. Col. No* 120. *p.* 189.

1786. *August* 14. CHRISTIAN SUTHERLAND *against* JEAN SUTHERLAND.

No 38.
Inhibition used against an intermediate apparent heir, of no effect after the succesion is taken up by a subsequent heir serving to the predecessor last infeft.

AN apparent heir executed a deed in favour of Christian Sutherland, on which she used an inhibition against him. He afterward granted an obligation to Jean Sutherland.

On the death of the apparent heir, after being three years in possession, the person succeeding made up titles to the remoter predecessor. In a competition which followed, between the inhibiter and the other grantee, the former claimed a preference in virtue of that diligence; to which, as being directed against an heir who died in the state of apparency, the latter objected, and

Pleaded; Though an apparent heir has a title to the annual produce of the estate during his life, yet dying before service, he cannot transmit any right in the estate itself, which still remains *in hæreditate jacente* of the ancestor. All diligence, therefore, intended after his death to affect such estate, as having been his property, must be inept and void.

The statute of 1695, it is true, has made the person serving heir to a predecessor last infeft liable for the debts and deeds of interjected apparent heirs three years in possession. This, however, is no more than a personal obligation, through which alone, or as being thus creditors to the heir served, those of the intermediate apparent heirs have access to attach the estate; so that in this respect the statute has made no alteration of the common law.

Now, though inhibition may affect subjects to be afterwards acquired as well as those antecedently belonging to the party inhibited, the diligence in question

must be unavailing, as having been used against a person who was at no time proprietor. No diligence can have effect in this case, but that which is directed against the heir whose right is completed by service.

No 38.

Answered; The object of inhibition is, to preclude debtors from disappointing the claims of their creditors, by posterior deeds tending to alienate or burden any real estate, which may fall under the right of the debtors. It has been admitted to be immaterial, whether such estate had been previsously, or not till afterwards, acquired. And it is plainly of as little importance, by what particular means it has come under the right of the debtor; whether immediately by his making up titles to it himself, or by the operation of law, in consequence of titles established in the person of a supervening heir. In both cases alike, it is the right of the debtor that is ultimately exercised.

The inhibition in question was calculated to debar all effect of the second deed, in carrying off, to the prejudice of the first, property attachable in the right of the granter; the very thing which is here attempted by the competing party. The inhibiter's claim of preference is therefore to be sustained.

The Lord Ordinary found the inhibition to be ineffectual, and repelled the claim of preference made on that ground.

THE COURT adhered to the interlocutor of the Lord Ordinary.

Lord Ordinary, *Elliock*. For the Inhibiter, *Elphinston*.
Alt. *R. Craigie*. Clerk, *Home*.

Fol. Dic. v. 3. p. 260. Fac. Col. No 292. p. 449.

1791. *June* 18. MORGAN *against* VISCOUNT of ARBUTHNOT.

No 39.

AN apparent heir was found entitled to follow out a decree of removing already pronounced, of which the tenant had presented a bill of suspension. See APPENDIX.

Fol. Dic. v. 3. p. 259.

1792. *December* 22. JAMES BEGBIE *against* Sir CHARLES ERSKINE.

No 40.
An heir apparent who declines entering, is bound to take a day to renounce, although he should be decerned exe-

JAMES BEGBIE obtained a decree before the Admiralty Court for payment of the balance of an account against the late Sir Charles Erskine, who brought the judgment under review by suspension.

Sir Charles died, and the action was transferred against Sir William his eldest son, who having also died, it was transferred against Sir Charles Erskine, the present defender, who then became heir apparent to the late Sir Charles his father.