

1627. *January 24.* L. GLENKINDY *against* CRAWFURD.

IN a registration pursued by the Laird of Glenkindy against Crawford, who was convened as behaving himself as heir to his unquhile brother, giver of the obligation, which was desired to be registrated; and for proving whereof the pursuer produced a bond subscribed by this defender, wherein he designed himself heir, at the least apparent heir, to his said brother; and this being alleged not to be sufficient to make him heir, seeing in this writ, wherein he used that designation, there was no reference to any benefit, or whatsoever business concerning his brother, neither was there any thing therein insert done, or for any thing to be done in his favours, nor was it then intended, or ever meant, that he should be thereby made heir to his brother; which being considered of by the Lords, they found that writ was not of that sufficiency to make the defender heir; seeing he therein calling himself heir, at the least apparent heir, thereby resolving in an alternative of apparent heir; and it not being thereby craved, nor intended amongst the parties, that he should be heir, nor no such thing then being in hand; that resolution of the words, in the fore-said alternative, was not found enough by the Lords to make him heir, or that he behaved himself as heir to him, except he would prove the same otherwise than by that writ of the tenor foresaid. In this process also, the LORDS found process against the defender, being called as behaving himself as heir, albeit it was *alleged*, That the heir could not be called while the expiring of year and day after the defunct's decease, which was not expired when this summons was intended, conform to 76th act, Parl. 6. Ja. 4. *anno* 1503; which allegiance was repelled, seeing the defender was convened, not as charged to enter heir, but as behaving himself as heir, which was his own deed, even as if he had been served heir, *quo casu* process would have been sustained, albeit within the year, seeing the defender did not allege that there were executors confirmed to the defunct, who should be answerable within the year for the defunct's debts, as that act of Parliament requires. See PASSIVE TITLE.

*Act. Baird.**Alt Mowat.**Clerk, Hay.**Fol. Dic. v. 1. p. 468. Durie, p. 261.*1627. *January 27.* LORE *against* CRAWFURD.

THE heir may be pursued within year and day after his father's decease, notwithstanding of the act of Parliament made by Ja. 4. Parl. 6. cap. 76. if he be entered and there be no executor.

Fol. Dic. v. 1. p. 468. Auchinleck, MS. p. 2.

No 25.

If an apparent heir incur any of the passive titles, he may be pursued *intra annum deliberandi.*

No 26.