

S E C T. III.

Rights and powers of an apparent heir, as to removing tenants, uplifting rents, selling the predecessor's estate, &c.—To whom rents unlifted during apparenacy belong.

1628. February 29. ROSE *against* His TENANTS.

No 10.

AN apparent heir is neither served nor seised heir to his father divers years after his father's decease, and yet pursues the tenants for the duties since his father's decease, as if his seising should be drawn back to the time of his father's decease.—THE LORDS grant no action until he be seised.

Auchinleck, MS. p. 2.

1633. February 19. OLIPHANT and AUCHTERLONY *against* TENANTS.

No 11.

ONE Oliphant, and Auchterlony his tutor-testamentar for his interest, pursue the tenants of the lands of ———, to pay to the said minor, as apparent heir to his father, the mails and duties of his lands, wherein the LORDS found, that seeing this pursuit was moved by the pursuer only as apparent heir, he not being infeft in the lands, nor yet retoured heir to his father, and his father's sasine produced, nor yet it being *answered*, That these defenders had ever acknowledged the pursuer to be their master, by paying of mails and duties to him of before, therefore that they could not be convened in this pursuit by the apparent heir: And found this defence competent to the defenders, although they were only naked tenants, and had no right in their own persons to the saids lands. Thereafter, upon the 26th of February, the LORDS sustained this pursuit at the instance of the apparent heir, he finding caution to relieve the defenders, who alleged no right in their persons for retention of the farms, and to make the same furthcoming to all parties having interest, which was done the rather, least the tenants should become *non solvendo*.

The Lords refused to sustain action of mails and duties at the instance of an apparent heir not infeft, though the tenant pretended no right; but upon the pursuer offering to find caution to make the rents furthcoming, they sustained the pursuit.

Clerk, *Hay*.

Fol. Dic. v. 1. p. 358. Durie, p. 675.

* * * Auchinleck reports the same case :

AN apparent heir cannot pursue for the mails and duties of his father's lands till he be retoured.

Auchinleck, MS. p. 6.