

' THE LORDS found the pursuers have no right to call for the apprising libelled, the same being ratified by the person himself against whom it was led.

No 27.

Act. Muir.

Alt. Arch. Hamilton.

Clerk, Sir James Justice.

Fol. Dic. v. 1. p. 284. Bruce, v. 2. No 15. p. 19.

## S E C T. III.

What writs may be called for.

1633. February 26.

L. SWINTON against L. WESTNISBET.

No 28.

Action of exhibition *ad deliberandum* was sustained of all writings made by the defunct to the defender, a stranger.

THE L. Swinton, as apparent heir to John Swinton his brother, and to Robert L. Swinton his father, pursues L. of Westnisbet, and his spouse, for exhibition of the writs of the lands of Swinton, as being in their hands, and also of all bonds made by his said brother to the defenders, or their children, that after sight thereof the pursuer might advise if he will enter heir to his said father, or brother, or not; wherein it being *alleged*, that the pursuer, as apparent heir, could have no action to pursue for any writs made by the pursuer's brother to the defender, it never being libelled, that these writs were either the proper writs of John Swinton, and his apparent heir, nor yet common to them with the defenders, without which they ought not to be exhibited to the apparent heir, specially tending to found an action to the pursuer against themselves. This allegiance was repelled, and the pursuit sustained, at the apparent heir's instance, for production of the writs and bonds made by the pursuer's brother to the defenders, albeit the same contained nothing in favours of the maker, nor of his apparent heir, nor heirs; to this effect, that the pursuer, after sight of these writs, might consider if he would enter heir or not to the maker; for, as he had liberty in law to advise within year and day, if he would enter heir or not to his brother, so the year not being expired, he might use all the means conducing for that end, which might inform if he would enter heir or not, the chief whereof was the sight of these bonds.

Act. Nicolson &amp; Stuart.

Alt. Advocatus &amp; Cunninghame.

Clerk, Gibson.

Fol. Dic. v. 1. p. 284. Durie, p. 677.

No 28.

\*\* Spottiswood reports the same case :

MR ALEXANDER SWINTON, as apparent heir-male to his umquhil father and brother, pursued an exhibition against the Laird of Westnisbet, of all charters, sasines, &c. given to his father and brother, and their heirs-male, and sicklike of all bonds and obligations made by them to the defender, to the end that he might have inspection of them, and after that advise whether or not he would enter heir to them, after he had seen the burdens to undergo. *Alleged, imo,* The pursuer could not be heard to pursue as apparent heir-male, till first he shew that the infeftments granted to his father and brother were granted to them and their heirs-male ; because albeit a general heir has that privilege to pursue as apparent heir for exhibition, yet an heir-male has it not, unless it be first verified that his predecessor was such a person as might have an heir-male. *Replied,* The evidents which should verify their infeftments to be taken to the heirs-male, are in the defender's hands, and he is calling for them. THE LORDS repelled this exception. *2do, Alleged,* The pursuer has no interest to pursue for bonds and obligations made by the defuncts to the defender, because they are neither his own proper evidents, nor yet common to him with the defender, in which two cases only exhibition can be sustained at a party's instance. *Replied,* He sought them only to be exhibited, to the effect he might know his predecessor's burdens, and since of the law he hath *annum deliberandi*, to advise if he will enter heir or not, he ought not to be excluded from the means by which he may come to the knowledge of his predecessor's estate, which is the only occasion wherefore that benefit is by the law given to apparent heirs.—THE LORDS repelled this exception likewise. *3tio, Alleged,* The Lady Westnisbet (who was convened as a haver) could not give her oath in prejudice of her husband. *Replied,* She, being convened as a haver, behoved to depone, let it work what it might.—THE LORDS repelled this allegiance also.

*Spottiswood, (EXHIBITION) p. 124.*

1661. November 19. & 20. TAILZIFER against FORRESTER and SORNBEG.

No 29.

Exhibition found relevant of all writs granted to the defunct, and of all obligations made by the defunct to his wife, children, and others in his family, at his death, but

PATRICK TAILZIFER, apparent heir to his brother Alexander Tailzifer of Redhouse, pursues his relict and her second husband, for exhibition of all writs made to her husband, and by her husband to any person or persons, to the effect he may advise whether he will be heir or not. It was *alleged,* That the defender was not obliged to exhibit writs made by the defunct, seeing they pertained not to the defunct ; and, as he could not pursue exhibition of them, so his apparent heir cannot, and *nemo tenetur edere instrumenta* to his adversary ; and, if that were sustained, no man would secure his charter chest, but might be forced to discover his weakness and secrets at pleasure, and many other in-