

No 23. but if it related to the jewels or other particulars only, then found it did not exclude her from this action.'

*Fountainball, v. 1. p. 228.*

1685. *January.*

No 24.

LADY FINTRY and LADY MARY SCRIMZEOUR *against* EARL OF LAUDERDALE.

An allegiance founded on an expired comprising against the pursuer's brother, is not sufficient to exclude an exhibition *ad deliberandum*, as apparent heir to his father, grandfather, and other predecessors, unless the comprising had been led against the brother as heir, or lawfully charged to enter heir to his predecessors.

THE Lady Fintry and Lady Mary Scrimzeour, as heirs of line to the late Earl of Dundee their brother, and to their father and grandfather, having pursued an exhibition *ad deliberandum* against the Earl of Lauderdale, and particularly for exhibiting the writs and evidents of certain houses and tenements in Dundee, Innerkeithing, Castlaidhill, and others that were not contained in the tailzie of the estate of Dundee, *alleged* for the defender; That he could not be obliged to exhibit the writs, because he had right to the lands by virtue of expired apprisings against the pursuer's predecessors, by which they were denuded of the property of the lands. *Answered*, That the defence was not competent against exhibition, but only against delivery, and an apparent heir may crave inspection even of expired apprisings, seeing they may be quarrelled upon nullities, or satisfied within the legal. And there were several lands belonging to the estate of Dundee, wherein the late Earl their brother was not infeft, but only their father and grandfather, to which the pursuers, as heirs of line to their predecessors, will have right. THE LORDS found that the allegiance founded upon the expired apprisings against the pursuers' brother was not sufficient to exclude exhibition at the pursuers' instance, as apparent heirs to their father and grandfather and others their predecessors, unless the apprisings were led against their brother as heir, or lawfully charged to enter heir to their predecessors, and therefore assigned a day to the defender to produce the apprisings and other writs upon oath.

*Fol. Dic. v. 1. p. 284. Sir Pat. Home, MS. v. 2. No 680.*

No 25.

1685. *December.* LORD YESTER *against* LORD LAUDERDALE.

FOUND that the defender in a common exhibition, without a declarator, was not obliged to depone if he had the writs called for before citation, and what he did with them, so as the LORDS might judge if he put them away fraudulently; but that the defender might, according to the old style, depone that he did not put them away fraudulently, without deponing if he had them before citation. But now the act of sederunt regulates the matter.

*Fol. Dic. v. 1. p. 284. Harcarse, No 484, p. 133.*