

process, because your action is raised within the *annus deliberandi* allowed to apparent heirs, and executed within the same, though the day of compearance be without the year, which is a preposterous diligence. *Answered*, There is nothing more ordinary than raising and executing of summonses *intra annum deliberandi*, providing the day you cite him to be *extra annum*. *Replied*, Whatever may be tolerated to sustain ordinary summonses *ad fundandam litem*, yet it can never be extended to odious unfavourable cases, such as non-entries, which are penal. THE LORDS repelled the dilator. *2do, Alleged*, I purged the *mora*, in so far as I offered a precept of *clare constat* with a year's rent. *Answered*, *Non relevat*; for I being minor, the offer should have been made to my curators, as well as to myself, and I was not bound to sign your precept; but the legal compulsitor was to run the charges out of the Chancery, which method you took not. THE LORDS repelled the allegiance. *3tio, Alleged*, You have adjudged the lands for a debt owing you by the vassal, and so may come in *pari passu*, or made yourself preferable for your expenses, and they were ready to prefer him *quoad* his debt, as far as his diligence would carry him, but it cannot import a consolidation of the property with the superiority. THE LORDS laid hold on an offer made by Carnwath, that he restricted the effect of his non-entry to his summons of wakening, and made no farther use of the casualty of non-entry but singly to prefer him to the other creditors, in so far as might secure the payment of the true sums owing him, viz. principal, annualrent, and debursed expenses; therefore they repelled the creditors hail defences, in respect of his declaration and restriction foresaid; which imported, that, if he had not made this concession, but extended the non-entry to the full, over and above his debt, some of the Lords would not have been so clear to repel the defences. For, when feus were gratuitous donations, it was no wonder that these feudal delinquencies were allowed; but now, these 200 years bygone, they being onerous and bought at a full adequate price of 20 years purchase or thereby. it seemed mighty unfavourable to forfeit a poor vassal upon the matter, for his negligence in not entering *debito tempore*. THE LORDS determined nothing about the year's rent for entering the creditors, seeing that was due by law, and came not to be considered in this process. The heir's own entry was only the duplication of the feu-duty; but the first adjudger or purchaser being a singular successor, behoved to pay a year's full rent, if the superior refused any ease.

*Fol. Dic. v. 1. p. 467. Fountainball, v. 2. p. 473. & 541.*

1710. July 29.

ALEXANDER BAILLIE of Castlecarye, against WILLIAM BROWN of Seabegs.

ALEXANDER BAILLIE of Castlecarye, who is vassal to William Brown of Seabegs, having within a year after his father's decease, served heir to him, and

No 38.

Citation upon a summons of declarator of

## No 38.

non-entry given to an apparent heir, *intra annum deliberandi*, found not to entitle the superior to the full rent of the vassal's lands from the citation, although the day of compearance was after elapsing of year and day.

charged Seabegs by a first and second precept out of the Chancery, to enter and infest him, upon a charter presented with the bygone feu-duties, and a bond to do what further should be found needful; Seabegs suspended after the last requisition, upon this ground, That the offer of the feu-duties was not sufficient, in respect he had raised a declarator of non-entry, which entitled him to the full rent of the charger's lands since the citation, and till that was paid, the suspender was not bound to enter him vassal.

*Answered* for the charger; His superior could have no right to the full rent, since the citation in the declarator of non-entry; because the summons was raised within the *annus deliberandi*.

*Replied* for the suspender; His vassal was cited within the year, but the day of compearance was after elapsing thereof, which is sufficient, Dewar *contra* Paterson, No 31, p. 6873. As albeit the act of parliament dischargeth summons to proceed upon charges to enter heir until after elapsing of forty days, yet uniform practice sustains the raising and executing charges to enter heir, and summons thereon *simul et semel*, when both the forty days and the days of the summons are suffered to expire before calling of the summons.

*Duplied* for the charger; If a superior might compel his vassal to enter within the year under the pain of a year's rent, he the vassal would thereby have no benefit by the *annus deliberandi*, but behoved to subject himself rashly to his predecessor's debts, to satisfy the unreasonable desire of his rigorous superior. The practick cited for Seabegs makes against him; for there the LORDS found no process till a new citation, in respect the former was given within the year.

THE LORDS repelled the reason of suspension, and found the letters orderly proceeded.

*Fol. Dic. v. 1. p. 467. Forbes, p. 437.*

1712. February 8.

MR ANDREW RAMSAY of Abbotshall, *against* Mr JOHN LAUDER younger of Fountainhall, &c.

## No 39.

A party in a pursuit for constituting a debt against four heirs-portioners, called them all; but one of them died *pendente processu*. The Lords refused to grant a diligence to call the next heir.

MR ANDREW RAMSAY, now of Abbotshall, having obtained an assignation from Squire Law, to a debt owing him by the deceased Sir Andrew Ramsay of Abbotshall, and resolving to adjudge, to fortify his disposition of these lands, he charges Mr John Lauder younger of Fountainhall, Lady Monkton, Lady Whitefield, and James Forbes younger of Thornton, as the four heirs-portioners of line to the said Sir Andrew, to enter heirs; and during the dependence of the process, the said James Forbes dies, which stopt farther procedure till his next brother were called, as representing Catherine Ramsay, his mother, one of the heirs-portioners; whereupon the said Mr Andrew gave in a bill to the Lords, representing the said James's death, and that he cannot proceed against