

No 47.

satisfied and paid of the sums in his comprising by his intromission, and what after counting shall be found wanting, he is willing to pay it. *Answered*, That old privilege indulged to superiors is much in disuetude, and few or no instances of it; but though it were in force, it can by no law nor form come in here. If Gilhaigie were seeking to enter, the Earl might reply on his power to redeem; or, if he, as superior, were pursuing a declarator of non-entry, and Gilhaigie, to stop it, offered a year's rent, to be received as a singular successor, the Earl might exclude him by his privilege; but the process here is a reduction as proprietor, and not as superior. *2do*, In that case, he must pay the debt as it stands, and not by a sham count and reckoning, putting nothing in his purse. *3tio*, The offer is no ways receivable now, when the apprising is so long ago expired, but must be made within the legal, especially you having owned me as vassal, by accepting the feu duties of several years, and the project has no other design but by a tedious process to shuffle the poor man out of his right. The LORDS found the Earl could not redeem here, but prejudice to his raising and insisting in a new process for that effect *speciatim*.

Fountainhall, v. 2. p. 715. and 731.

No 48.

1714. February 10. CRAWFORD against CRAWFORDS.

THE LORDS found the action of exhibition *ad deliberandum* competent to all kinds of heirs male and of tailzie, as well as heirs of line; but found it relevant to stop process at an apparent heir's instance, that it was offered to be instructed that there was a nearer heir male.

Fol. Dic. v. 1. p. 520. Forbes, MS.

. This case is No 9. p. 3986., *voce* EXHIBITION *ad deliberandum*.

1724. February 12.

JAMES, Duke of Hamilton, and Others, against NEIL MACALLUM and others.
In-dwellers in Glasgow.

No 49.

Heritors infest in fishings prosecuted parties for fishing in a certain river. Pleaded, the defenders fished in a part of the river not belonging to the pursuers. The pursuers found to have

THE Duke of Hamilton and other heritors who were infest in the salmon-fishing upon the river Clyde, pursued Macallum and others, who came from Glasgow, and fished salmon in the said river.

It was *pleaded* in defence, That the pursuers had no right to that part of the water in which the defenders had fished, the same belonging to the town of Glasgow, who had a right of fishing, and the defenders had at least their tacit allowance.

Answered for the pursuers, That since the defenders could pretend no right to the fishing themselves, any person who had an express right to the salmon