

the other three till one be cited to represent the said Catherine, seeing all the four must be in the field, and therefore craved, seeing he could not divide his process, and that he could not be obliged to raise a new one, because of this unforeseen emergent of one of the heir's deaths, that the Lords would grant diligence to cite the next eldest son of Thornton *cum processu*, and his father as tutor and administrator of the law to him, that he be not put to a separate process against him, or to wait the *annus deliberandi*, ere he can be cited; and seeing the Lords, by the late act of sederunt in November last, have declared, that if the debtor, or his apparent heir, or other defenders, shall die, the process shall stop no longer than till the next apparent heir be cited on a diligence, without waiting the outrunning of the *annus deliberandi*, and that the parity of reason was the same in that case. But the Lords thought there was a great difference betwixt processes of sales and ranking, to which the act of sederunt only related, as being summary processes, and the constitution of a debt against apparent heirs, which was the present case; and remembered that, in the case of Sir William Nicolson, the creditors were twice stopped by the death of two apparent heirs, and put to stay the year of deliberation; and, on this account, they refused the said Mr Andrew Ramsay's bill, and would give him no diligence to call the next heir till the year and day were run.

Fol. Dic. v. 1. p. 468. Fountainball, v. 2. p. 720.

1713. November 19.

EARL of DALHOUSIE *against* LORD HAWLEY and His CHILDREN.

THE LADY HAWLEY having died during the dependence of an action of reduction and declarator, at the instance of the Earl of Dalhousie, against her, the LORDS refused to decern in a transference of the said action against the Lady's son and apparent heir *intra annum deliberandi*.

Fol. Dic. v. 1. p. 468. Forbes, MS. p. 2.

1749. February 25. STEWART in Towiemore *against* ANDERSON.

THE deceased Robert Stewart in Towiemore, having contracted great debts, a scheme was laid by his friends to transact the debts, whereof eases were expected, and Alexander Anderson and others undertook the trust. Accordingly, Anderson transacted the debts in his own name; but, as no writing had intervened, his son pretending ignorance of his father's engagements, refused to communicate the eases.

No 39.
till the year
and day were
run.

No 40.

No 41.
Within the
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ance would

No 41.
infer a pas-
sive title or
not.

A process of count and reckoning was pursued against him, wherein a proof before answer of the eases got was allowed; but the defender dying before the proof was taken, a transference was pursued against his heir.

To which it being objected, That no transference could proceed *intra annum deliberandi*, the ORDINARY, after advising with the LORDS, "found, That the heir is not obliged to answer within the *annus deliberandi* to any suit as representing his father, and therefore refused to transfer."

Against which the pursuer reclaimed, and urged, That as the defender could suffer no prejudice by the transference, so even the proof formerly allowed should be allowed to proceed, as that would infer no passive title; and if there was any doubt, he was willing to consent that nothing to be done in the proof *intra annum* should infer a passive title; and gave this reason for his anxiety, that the proof of the eases depended upon the testimonies of certain aged witnesses, whereof two had already lately died.

"THE LORDS refused the petition." They were of opinion, That within the year no step can be taken against the heir, whether his appearance would infer a passive title or not.

Fol. Dic. v. 3. p. 316. Kilkerran, (ANNUS DELIBERANDI.) No 1. p. 28.

No 42.
The objec-
tion, That
diligence was
*intra annum
deliberandi*,
not personal
to the heir,
but compe-
tent also to
creditors.

1757. December 23. EDWARD SUMMERS against SIMSON and GARDNER.

ON the 23d March 1751, Thomas Summers died considerably in debt, leaving a daughter Margaret, and his wife with child, who, on the 23d October thereafter, was delivered of a posthumous son, named Thomas.

On the 28th January 1752, Simson, one of the creditors of Thomas Summers the father, took decret of constitution against Thomas the son, as charged to enter heir to his father, and on the 16th June 1752, decret of adjudication. Thomas the son died in August 1752.

In a competition betwixt the creditors of Thomas Summers, it was objected by Edward Summers, one of them, to this diligence, That it had been taken *intra annum deliberandi*.

Answered for Simson, The objection was never made by Thomas Summers, the son, to the diligence. The objection was personal to the heir himself; and if he did not make it, no competing creditor could found upon it.

Replied for Edward Summers; By the nullity of the two decreets, there was a *jus quæsitum* to him, which the failure of the heir to object, could not disappoint. The objection, That decret was taken *intra annum deliberandi*, is known to make the defender as much free from the effects of the decret, as the objection, That a bond wanted writer and witnesses names, is known to make him free from the effect of the bond. In the last case, a creditor can ob-

A person left a daughter, and his wife pregnant, who brought forth a posthumous son. This son died a few months after his birth. Found that in computing the *annus deliberandi*, the time between the father's death and the birth of the son was not to be reckoned.