

No 8.

ber to inspect the book, and if it appeared that there was any copartnership between the parties' defunct, that the books should be given to the pursuer even *ad fundandam litem*; but if otherwise, that the books should be given back to the defender.

case of a tutor and his pupil was no way alike, because the count book was in effect the pupil's; and the copartnership, and factory was denied.

' THE LORDS ordained the book to be put in the hands of the auditor, and if he found by inspection thereof, any accompts appeared as betwixt partners and factors, he should produce the same to the other party, even *ad fundandam litem*; otherwise that the same should be given back, and not shown to the pursuer.'

Fol. Dic. v. 1. p. 281. Stair, v. 1. p. 549.

* * * Gosford reports the same case:

Doctor Paton being executor to his brother William, and having assigned his son to all sums of money due to him as executor, he did pursue an action of count and reckoning, against Agnes Scott, relict of Archibald Paton, for several sums of money due by the said Archibald her husband, to whom she was executrix, and craved exhibition of the said Archibald's count book for clearing of debt and credit betwixt him and the said William. It being *alleged* for the defender, That *nemo tenetur edere instrumenta contra se*, the LORDS ordained that the count book should be exhibited to one of their number, and if it did appear thereby, that there was any copartnership betwixt the said two brethren, or that the said Archibald was factor for his said brother William, in that case, they ordained the same to be exhibited, reserving to both parties how far the articles might prove *pro* or *con*.

Gosford MS. No 22. p. 9.

S E C T. III.

Demand of exhibition of ' all writs.

1637. February 25.

HEPBURN against BARCLAY.

No 9.

The Lords sustained process at the instance of a bankrupt's creditors against his mother, for exhibition of all writings

ONE HEPBURN being creditor to Barclay, and Barclay being bankrupt, the said creditor pursues Barclay's mother, as haver of certain bonds and writs pertaining to her son, for production thereof; that he may know and consider, what execution he might lawfully seek thereupon, after sight thereof; in which libel there was no special writs particularly libelled, being unknown to him, whereby he could comprise or arrest the same; in which process it being questioned, if such a general summons could be sustained, or if the defender could

in law be holden to answer to such a libel, or to produce for founding of any either action or execution to the creditor,—the LORDS sustained this action, in respect that the pursuer had a probable and excusable ignorance of his debtor's writs; as an apparent heir might call for production of his predecessor's writs, that he might advise, if he could enter heir or not to his predecessor, *see* No 47. p. 2804.

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 281. Durie, p. 830.

No 9.
belonging to him in her custody, tho' no particular writings were condescended on.

1717. January 8. WILSON of Backie *against* MR JOHN ARNOT.

THERE being a declarator of trust raised at the instance of the said pursuer against Mr Arnot, as having disposed his estate to him, without a back-bond, or any onerous cause, but only for relieving the estate of some incumbrances, which Arnot was to transact to the best advantage; among other points in this process for expiscating the trust, the LORDS ordained the defender to give in a condescendence of the *res gesta* and onerous cause of the disposition, and how the same was performed: The defender accordingly gives in his condescendence, upon which the pursuer raises the reduction upon fraud, and repeats the same in this process; and the defender's production, mentioned in his condescendence, being only decreets of adjudication and the like, the pursuer insisted that the grounds and warrants thereof should be produced.

Answered for the defender; That he had produced sufficient to instruct his condescendence, and to redargue the facts as advanced by the pursuer, so as to exclude that declarator of trust which is the present process; and all the grounds of the said decret being narrated therein, so far as to discover the nature as well as the extent of them, there was no necessity for any further production: Nevertheless,

THE LORDS ordained the defender to exhibit and produce upon oath, in the clerk's hands, the whole writs mentioned in his condescendence, and to which he had right, with the grounds and instructions thereof, which he has or had in his hands, at the time of the commencement of this process, and since.

Act. *Robert Dundas.*

Alt. *Grabame et M^r Kenzie.*

Clerk, *Robertson.*

Bruce, v. 2. No 47. p. 63.

No 10.
A party having produced decrees, to exclude a declarator of trust, was found obliged likewise to exhibit the grounds and warrants.

1735. June 26.

FRANCIS SCOT *against* LORD NAPIER.

IN a reduction and improbation of certain land rights, the defender produced charter and sasine, sufficient, with forty years possession, to exclude the pur-

No 11.