

No 29. yea, if he produce a title in himself, he may even force the defender to exhibit writs *ad probandum*, by an incident, as well as third parties, to whose writ he hath no right, save only to bear testimony for him.

THE LORDS having heard this case in their presence, because the point had been variously decided as to writs granted by defuncts, found the libel relevant, not only for all writs granted to the defunct, but also granted by the defunct, to his relict, bairns, or servants in his family at the time of his death, being such writs upon which no infeftment followed; for as to these, they thought the registers may give as much evidence as was sufficient to deliberate, and would not upon this ground open charter-chests for showing real rights; and the plurality carried, that even personal rights, granted to strangers, should not be produced *hoc modo*; several being of the opinion, that debts, discharges, and personal rights should be thus exhibited, in respect that heirs in Scotland were liable *simpliciter* for all the defunct's debts, and therefore should have inspection, as well of his debts as of his estate, as was found before between the Lairds of Swinton and West Nisbet, observed by Durie, 26th February 1633, No 28. p. 4005.

*Stair, v. I. p. 65.*

1664. November 12. GALBREATH *against* COLQUHOUN.

No 30.

A person producing an irredeemable disposition, was found not bound to produce the prior progress of writs, although in favour of the pursuers; but he was bound to make oath whether there was any tailzie in their favour

WALTER GALBREATH pursues an exhibition of all writs made by, or to his predecessors, *ad deliberandum*.—THE LORDS restricted the libel to writs made to the defunct or his predecessors, or by them to any person in their own family, or containing any clause in their favour; whereupon the defender having deponed, that he had in his hand a disposition of lands made by the pursuer's predecessors, irredeemably; and that he had his predecessor's progress of these lands, but that he thought there was no clause in any of these writs, in the pursuer, or his predecessors favour.

THE LORDS having considered the oath, ordained the defender to produce the disposition, denuding the pursuer's predecessors; and thought, that being produced simply, without condition or reversion, it liberated him from producing the pursuer's predecessor's progress, though made in their favour; but because the pursuer alleged, that in their predecessor's progress, there was a clause *de non alienando*, which would work in his favour, and that the oath was not positive, but that he thought, they ordained the defender to be examined if he had any tailzie.

*Stair, v. I. p. 224.*