

1734. June 19. CAMPBELL *against* EARL of CAITHNESS.

No 6.

ONE deriving right to lands from an apparent heir, who died in the state of apparen- cy, insisted in an exhibition of the title deeds of the estate. *Objected*, That he had no right to the lands, nor consequently to the title deeds.—THE LORDS found the pursuer had no title to demand exhibition of rights granted to the predecessors of his author, the apparent heir. See APPENDIX.

Fol. Dic. v. I. p. 281.

S E C T. II.

Whether a party can be required *edere instrumenta contra se.*

1623. February 1. MONTEITH *against* M'MATH.

IN an action pursued by Robert Monteith against William M'Math, The LORDS found, that no man could have action to compel a party to exhibit writs, to found an action against the defender.

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Fol. Dic. v. I. p. 281. Haddington, MS. No 2738.

1668. July 7.

RELICT of WILLIAM PATON *against* RELICT of ARCHIBALD PATON.

THE relict and executors of William Paton, pursue the relict and executors of Archibald Paton, for count and reckoning of sums and goods belonging to the said umquhile William Paton by Archibald, and crave the defender to produce Archibald's count books, who alleged *nemo tenetur edere instrumenta sua contra se ad fundandam litem*; so that the desire was no ways reasonable, unless the pursuer had given in a particular charge, and liti-contestation had been made thereon; in which case, the defender might have been compelled, *ad modum probationis*, to have produced the books. It was *answered*, the contrary was found in the count and reckoning betwixt the children of George Suitty against the representatives of William Suitty their tutor, and that there was as great reason here, the two defuncts having been brothers, and being in copartnery together, and the one factor for the other. It was answered, that the

No 8.
In a count and reckoning betwixt the representatives of two brothers who were alleged to be copartners, the pursuer craved production of the defender's father's account book to fix a charge against him. The Lords appointed one of their num-

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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