Whereas this day was appointed for hearing counſel upon this appeal and anſwers: Counſel appearing for the reſpondents, but no counſel for the appellants, and the reſpondents' counſel being heard and withdrawn, It is ordered and adjudged, that the petition and appeal be diſmiſſed; and that the interlocutory ſentences or decrees therein complained of be affirmed: And it is further ordered, that the appellants do pay, or cauſe to be paid to the reſpondents, the ſum of 100l. *for their coſts in reſpect of the ſaid appeal.*

Judgment, 6 Feb. 1722-3.

For Reſpondents, *Ro. Dundas.* *Will. Hamilton.*

James Macpherſon, of Killyhuntly, - *Appellant;* Caſe 97.
John Macpherſon, of Dalrady, - *Reſpondent.*

11th *Feb.* 1722-3.

Truſt—Qualifications of truſt found to be irrelevant.

THIS appeal related to certain deeds executed in favour of the reſpondent, by Elias Macpherſon, of Invereſbie, being conveyances of his whole eſtate, bearing to be for onerous conſiderations, and containing abſolute warrandice. Theſe deeds were executed in 1693, 1694, 1695, and 1696.

The appellant's father had a wadſet upon the eſtate of this Elias; and Elias, on the 7th of February 1696, conveyed his right of reverſion of this wadſet to a truſtee for the appellant's father, by a deed bearing to be for onerous conſiderations. Elias alſo executed an inſtrument on the ſame 7th of February 1696, *declaring upon his ſoul and conſcience*, that the deeds formerly executed by him, in favour of the reſpondent, were in truſt only.

After this period, on the 24th of February 1696, Elias executed another deed in favour of the reſpondent, reciting certain bonds formerly granted by him in the reſpondent's favour for money lent, and that the ſame bonds being returned, he acknowledged the ſame as the price of his eſtate remaining unencumbered with wadſets. Elias died without iſſue, and the reſpondent having taken ſteps for the redemption of the wadſet now belonging to the appellant, the appellant brought an action of declarator before the Court of Seſſion, to have it declared, that all the deeds formerly executed by Elias Macpherſon, in the reſpondent's favour, were only in truſt for the grantor. In this action he inſiſted that the cauſe of action having ariſen before the act 1696 c. 25. was paſſed, the truſt might be proved by other means than writ, or oath of party, he founded upon the declaration of *ſoul and conſcience*, and other ſpecial circumſtances in the ſituation of the parties. 1696, c. 25.

The reſpoudent made defences, and after ſundry proceedings the Court on the 13th of July 1721, "found that the qualifica-"tions of truſt alledged by the appellant, are not relevant and "therefore aſſoilzied the reſpondent and decerned."

The appellant gave in ſeveral petitions againſt this interlocutor, but the Court on the 28th and 29th of July 1721, and 9th of February 1722, "adhered to their former interlocutor."

Entered, 23 Oct. 1722.

The appeal was brought, "ſeveral interlocutory ſentences or "decrees of the Lords of Seſſion of the 13th, 28th, and 29th days "of July 1721, and 9th of February 1722."

(The particular circumſtances of the caſe are ſtated at conſiderable length in the appeal caſes, but not with ſufficient diſtinctneſs, to render an abridgement of them uſeful.)

Judgment, 11 Feb. 1723.

After hearing counſel, *It is ordered and adjudged that the ſaid petition and appeal be diſmiſſed, and that the interlocutory ſentences or decrees therein complained of be affirmed.*

For Appellant, *Ro. Dundas.* *C. Talbot.*
For Reſpondent, *Dun. Forbes.* *Will. Hamilton.*

Caſe 98. Alexander Murray, of Broughton, Eſq; *Appellant;*
George Bullerwell, Gentleman, - *Reſpondent.*

Ex parte (a)

12th *Feb.* 1722-3.

Proceſs.—In a competition between two perſons, claiming to be heirs to an eſtate, the inqueſt refuſed to retour either of them. One of the parties in an action of reduction and declarator, calls the other as a defender; a third claimant now craves to be admitted, as a defender in this action, ſtating himſelf to be in the ſame degree of propinquity with the other defender, which the purſuer acknowledged. The Court having refuſed to admit this third party as a defender in that action, the judgment is reverſed, *ex parte.*

JAMES Earl of Annandale died about 80 years ago, leaving no heirs of his own body, and in default of them, his eſtate went to the daughters of Sir James Murray of Cockpool, paternal uncle to the ſaid earl. The appellant, and the Viſcounteſs of Stormont, were deſcended from theſe daughters.

The reſpondent laid claim to the eſtate of the ſaid James Earl of Annandale, in the character of his neareſt heir; and took out a brieve from Chancery for ſerving himſelf neareſt heir; and gave in his claim to the inqueſt accordingly. The Viſcounteſs of Stormont, appeared as a party by her counſel, and objected to the evidence brought by the reſpondent, as no wiſe ſufficient to prove that he was heir, or at all related by deſcent of lawful iſſue

(a) This is given entirely from the appellant's caſe only, no appearance having been made for the reſpondent.