

1609. *December 1.* DALGLIESH *against* ANDERSON.

No. 2.
Though the nearest heir renounce, it will be to no purpose to charge the next apparent heir, who cannot enter while there is a nearer in existence.

Anne Anderson having contracted with Dalgliesh in ———, the said Dalgliesh deceasing, Anderson charged his brother and apparent heir to enter, who renouncing, Anderson summoned the said apparent heir to hear and see his contract registered, to the effect he might thereupon have such execution against the lands and goods pertaining to the defunct as if he were on life. It was excepted by the party called, that no process could be given against him, because he had renounced; which was repelled, because it was necessary to be called *cognitionis causa*, and no execution was sought against him. He next alleged, that the cause could not come in by way of registration, but should have been pursued for adjudication of the particular lands pertaining to the defunct, and this summons was general, which was also repelled, and the order found good, as it had been before betwixt Patrick Hamilton, Indweller in Edinburgh, and Small, the relict of umquhile John Hamilton, merchant, and one Crichton, in Sanquhar. Lastly, It was alledged, that no process should be granted, because this Dalgleish having renounced, the next apparent heir of the defunct should have been charged to enter. It was answered, That it were frivolous to charge a man to enter who *per rerum naturam* could not enter, he not being nearest of kin, and so not liable to answer to the points of the brieve.

Fol. Dic. v. 2. p. 397. Haddington MS. No. 1668.

1612. *March.*

A. *against* B.

No. 3.

A general retour will not be sustained while there is a nearer heir in life, though the nearer heir has renounced. See APPENDIX.

Fol. Dic. v. 2. p. 397. Haddington MS.

1633. *July 11.*

OLIPHANT *against* OLIPHANT.

No. 4.

The right to the dignity of a baron, where no patent appears directing the course of succession, descends to the nearest heir of line, though female.

Fol. Dic. v. 2. p. 398. Durie.

* * This case is No. 1. p. 10027. *voce* PEER.

* * The contrary was found *in anno* 1729, with respect to the Lordship of Lovat, which was found to descend to heirs male.