

1629. *June 25.*JOHN AUCHTERLOUNY *against* WILLIAM and ANNAS GUTHRIES.

No 29.

An heir of line having renounced, it was found, that the heir of provision might be pursued, without farther discussion of the heir of line.

JOHN AUCHTERLOUNY obtains a decret of registration of a bond made by umquhile Alexander Guthrie for 100 merks, against William Guthrie, heir of tailzie to the said umquhile Alexander, in which action of registration, Annas Guthrie, heir of line to the said umquhile Alexander, was called and assoilzied, in respect she renounced to be heir, and the registration only ordained against her *cognitionis causa*, to have execution *contra hereditatem jacentem* upon the said decret of registration. The said William Guthrie, heir of tailzie, is charged by the creditor; he suspends upon this reason, that the heir of line should be first discuss; and although both the heir of line and of tailzie may be pursued in one libel, yet the heir of line ought first to be discuss; and although she renounces, yet he might pursue for adjudication from her, of such rights as fell to her as heir of line; and, till the charger follow out this course, he could not charge the heir of tailzie. To which *answered* the charger, having convened the heir of line, and she having renounced, it was in his option, either to pursue the heir of tailzie or seek adjudication. THE LORDS found the letters orderly proceeded against the heir of tailzie, but ordained the charger to make assignation of that right to the heir of tailzie, that he might crave adjudication for his relief of the rights pertaining to the defunct, whereunto the heir of line might succeed.

Fol. Dic. v. I. p. 248. Auchinleck, MS. p. 3.

1666. *December 18.*A. *against* B.

No 30.

Found in conformity with Cowan against Murray, No 28. P. 3577.

IN a process against an heir of provision, it was *alleged*, That the heir of line ought to be first discuss; it was *replied*, That the heir of line was convened and renounced; and it being *duplicated*, That the estate belonging to the heir of line, and whereto he should have right if he were served heir, ought to be discuss,

THE LORDS found, no process against the heir of provision, until the heir of line was discuss; and that the renunciation of the heir of line was not sufficient; but that the creditor behaved to proceed to adjudication *contra hereditatem jacentem*, belonging to the heir of line.

Fol. Dic. v. I. p. 248. Dirleton, No 69. p. 29.

No 31.

Found in conformity with Auchterlouny against Guthrie, No 29. P. 3578.

1678. *June 22.*CRAWFURD *against* The HEIRS of LINE of the LAIRD of RATTAR.

THOMAS CRAWFURD having pursued the heirs of line and provision of the Laird of Rattar, for payment of a debt of their father's, and both having com-