

in law be holden to answer to such a libel, or to produce for founding of any either action or execution to the creditor,—the LORDS sustained this action, in respect that the pursuer had a probable and excusable ignorance of his debtor's writs; as an apparent heir might call for production of his predecessor's writs, that he might advise, if he could enter heir or not to his predecessor, *see* No 47. p. 2804.

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 281. Durie, p. 830.

No 9.
belonging to him in her custody, tho' no particular writings were condescended on.

1717. January 8. WILSON of Backie *against* MR JOHN ARNOT.

THERE being a declarator of trust raised at the instance of the said pursuer against Mr Arnot, as having dispoised his estate to him, without a back-bond, or any onerous cause, but only for relieving the estate of some incumbrances, which Arnot was to transact to the best advantage; among other points in this process for expiscating the trust, the LORDS ordained the defender to give in a condescendence of the *res gesta* and onerous cause of the disposition, and how the same was performed: The defender accordingly gives in his condescendence, upon which the pursuer raises the reduction upon fraud, and repeats the same in this process; and the defender's production, mentioned in his condescendence, being only decreets of adjudication and the like, the pursuer insisted that the grounds and warrants thereof should be produced.

Answered for the defender; That he had produced sufficient to instruct his condescendence, and to redargue the facts as advanced by the pursuer, so as to exclude that declarator of trust which is the present process; and all the grounds of the said decret being narrated therein, so far as to discover the nature as well as the extent of them, there was no necessity for any further production: Nevertheless,

THE LORDS ordained the defender to exhibit and produce upon oath, in the clerk's hands, the whole writs mentioned in his condescendence, and to which he had right, with the grounds and instructions thereof, which he has or had in his hands, at the time of the commencement of this process, and since.

Act. *Robert Dundas.*

Alt. *Grabame et M^r Kenzie.*

Clerk, *Robertson.*

Bruce, v. 2. No 47. p. 63.

No 10.
A party having produced decrees, to exclude a declarator of trust, was found obliged likewise to exhibit the grounds and warrants.

1735. June 26.

FRANCIS SCOT *against* LORD NAPIER.

IN a reduction and improbation of certain land rights, the defender produced charter and sasine, sufficient, with forty years possession, to exclude the pur-

No 11.

No 11. suer. The pursuer took out a diligence, in general to prove interruptions; and having executed the same against the defender himself, the LORDS found that he was not obliged to depone unless a special condescendence were given of writs called for to be exhibited.

1736. *January 13.*

THE LORDS afterwards refused to oblige the defender to produce an inventory of his writings, particularly condescended on by the pursuer.

Fol. Dic. v. 1. 282.

* * This case is reported by Clerk Home, 8th July 1737, No 27. p. 358.

1761. *November 28.*

GEORGE-JAMES Duke of Hamilton and his TUTORS, and DUNBAR Earl of Selkirk, *against* ARCHIBALD DOUGLAS of Douglas, Esq.

No 12.

No person can be obliged to show his charter-chest *per aversionem*, although any particular writing being called for by a person having interest, the defender may be compelled to produce it.

ARCHIBALD Duke of Douglas was infeft in his estate upon a charter from the Crown in 1707, in favour of himself, and the heirs-male of his body; whom failing, to the heirs called by deeds executed by his father.

In 1759, the Duke became bound to settle his estate upon the heirs-male of that or any subsequent marriage; whom failing, upon the heirs-female of the marriage; whom failing, to such heirs as he had named or should name in the settlements made or to be made by him; and failing thereof, to his own nearest heirs and assignees whatsoever.

Upon the 11th July 1761, the Duke executed an entail, in which he granted procuratory for resigning his estate in favour of himself and the heirs whatsoever of his body; whom failing, the heirs whatsoever of the body of the deceased James Marquis of Douglas, his father; whom failing, Lord Douglas-Hamilton, second son of the deceased James Duke of Hamilton; whom failing, certain other substitutes.

The Duke, of the same date, having no heirs of his body, nor prospect of any, made a deed of appointment of certain tutors and curators to Archibald Stewart, a minor, son of the deceased Lady Jane Douglas, his Grace's sister, as the person who was to succeed to him, failing issue of himself.

The Duke died before the end of that month; and the said Archibald Stewart, now Douglas, took out a brieve from the chancery, in order to be served heir of provision in general to him, upon the deed 11th July 1761; and this service having come before the macers in September said year, a proof was led of his propinquity, and compearance was made for the Duke of Hamilton and