

in his Service; upon his obligation to the Lord to Deliver (if he were not served within a Certain time) And that the Creditor might have the Apparent heir if he Refused Not to be taken might, subordinate the Writs and put them out of the way to the prejudice; 16 Feb. 1673 Railway contra. Offered by Discretion. Nor can an Apparent heir in such a process ad Deliberandum Press to have the Writs Exhibited transcribed, or to have them transcribed upon his own & hanged 20 March 1707 Buchanan contra M. 1. trose. Because such a process tends only to Inspection and to raise it much the same with trying up the papers, which cannot be got without an Active title ad heir. Not yet can an Apparent heir be obliged such as had Dealing with his predecessor to count and reckon ad Deliberandum 22 June 1671 Leitch contra Gaffney lib. 3 Fet. 5. § 1. It being unreasonable to trouble persons to count with one who cannot Exoner and Discharge them. Tho it has been otherwise formerly Decided 16 March 1637 Home contra Blackader.

The proper Defence in this Action are 1<sup>o</sup> that the pursuer hath actually entered heir already, and so had no power for Deliberation lib. 4 Fet. 33. § 7. But it is not a Reason of Defence, that he hath behaved ad heir, or his Successors Successors for they are passive titles competent only to Creditors to be taken on their oids. § 5. And yet the Lord inclined to sustain the Defence, that the pursuer could not Deliberate, because he was Imprimed Proffly by Dismissing the heretage, if it were justly Verified: tho they would not suffer a Course of proffly for stopping an Exhibition not ad Deliberandum 3 Feb. 1671 Reddock contra Newark. 2<sup>o</sup> That the pursuers predecessors were totally denied: which Defence must be justified Scriptura, being Imprimed from the Defender from producing any such Writs of such a right: heir ibid. § 7. 3<sup>o</sup> That the Writs before are in publick custody in the session Records at Edinburgh and the Defender Condescends upon the dates of the Register: heir ibid. But the Apparent heir is not obliged to go to justify such Writs in inferior Registers: heir ibid. § 4.

Sect. 7.

Aliment out of the predecessors lands & be other things which an Apparent heir may do and is entitled to.

An Apparent heir in ward lands, is entitled to aliment out of them during the Ward, according to his quality of

Both No other feu or Blended lands to live upon or to what is wanting of a sufficient aliment out of his other lands Act 25 Par. 3. T. 4. And any other Apparent heir whose predecessors estate is forfeited, if he cannot alimonde Inter-tain himself, gets aliment off the life rentor, who is not such by Reservation.

An Apparent heir may defend his predecessors right, whether he be Heir or Appair for his Interrest 19 January 1627 L. Rossin contra Jehannts. And may continue his predecessors possession and hold Courts and give in Marts and duties against the Grants: lib. 5 Fet. 5. § 2. Who hath No right to Compell or constrain his title, and may defend their possession, by Strivings: this predecessors right 19 January 1627 L. Rossin contra Tenants. Apparent heirs in possession by Virtue of the predecessors settlement, have right to be in the Election of, and may be Elected Commissioners for Shires or Shewaries to the parliament or Convention Act 21 Par. 3. h. 2.

When a Peer gets a patent of honour to himself and his heirs, his peer may enjoy the Honour and sit in Parliament tho he be not served: Newark Answer to Dint. Double Fel. Titles of Honour & Fet. Behaving ad heir. In any case, a heir hath a possessory title to the fruits and Rents of the predecessors estate from his death, till he himself Die or Renounces to be heir: Which are affeable by his Creditors, and so far as Unemployed go to his Executors 7 July 1681 M. Blair contra.

When an Apparent heir was found to have right to the Rents of his predecessors lands from the time of his death, till the rents fell due while the Apparent heir was in Utero Unborn, and he died before he was Entred. And the Real heir fulso meeting with the rents of those Years that the Apparent heir lived, was made liable for his Subsistions to the Apparent heirs Representatives and Creditors 20 Decemb. 1662 Leary contra Jaggay contra Garsagany I. air lib. 3 Fet. 5. § 2. But the Court thereafter found that an Apparent heir Dying Unentred had No right to the Rents of his predecessors estate Inter Veening belidat the death of the predecessor last Fullert and the on by of the Real heir, Except in so far as they were actually supplied by him, and that what remained Unemployed at his death, was in hereditate fa conte and Belonged to the heir Entred, who was preferred to one deriving right by assignation to the Rent from the Apparent heir. Seeing these rents arose from and were Accory to lands where of the Real Right was never in his person, who had only an Apparency or Jus Suezcedendi which ceased by his death 2 Feb. 1638. Purty of Balgony contra