

1684. *March.* LADY YESTER *against* DUTCHESS OF LAUDERDALE.

IN an exhibition *ad deliberandum*, at the instance of the Lady Yester, against the Dutchess of Lauderdale, of bonds granted to the Duke, and in the defender's custody;

*Alleged* for the defender, That she had a disposition and assignation to all sums of money belonging to the Duke, and consequently *nomina debitorum*.

*Answered*, By sums of money nothing can be understood but sums lying by the defunct in specie.

THE LORDS, before answer to the import of the clause, ordained the defender to exhibit *ad deliberandum*.

*March* 1685.—The Lady Yester having insisted in the exhibition, it was *alleged* for the defender, That the pursuer having granted a bond to found a real diligence against her father's estate, and being charged thereon, and renouncing, she ought not to have inspection; for this is not like the renunciation of an apparent heir charged by a creditor.

*Answered*, That an apparent heir renouncing to one, may either renounce to another, or enter heir in obedience to the charge, and so may deliberate about entering, and ought to have inspection. Again, apparent heirs granting of bonds to adjudge their predecessor's estate upon, infers no passive, unless they come to possess, or intromit by virtue of the right, as is clear from the act of sederunt.

THE LORDS found the defender ought to make a term in the exhibition.

*Harcarse*, (EXHIBITION.) No 483. p. 132.

1686. *March.* LORD CALLENDAR *against* DUKE OF HAMILTON.

IN an exhibition *ad deliberandum*, raised by my Lord Callendar, against the Duke of Hamilton;

*Alleged* for the defender, That such actions are only competent to heirs of line, and not to heirs of tailzie; *2do*, The defunct was denuded by a disposition to Lord John Hamilton, which the pursuer, an apparent heir of tailzie, cannot quarrel.

*Answered*, The action *ad deliberandum* is competent to all heirs who may be charged; *2do*, The pursuer hath interest to call for the disposition, seeing it may contain clauses or conditions that may concern him; and when an heritor of a tailzied estate doth any deed contrary to the tailzie, the succeeding heir of tailzie may quarrel the same.

*Replied*, The tailzie contains no irritancies in case of failzie and contravention, but only obligations in favour of the heirs, whereof they cannot quarrel the contravention.

No 6.

A party held a general disposition, alleging it conveyed only *nomina debitorum*, and therefore exhibition *ad deliberandum* was not competent. Found obliged to exhibit before answer as to import of the deed.

No 7.

Action *ad deliberandum* competent to all heirs who may be charged, whether of line, tailzie, or others.

No 7.

THE LORDS found action *ad deliberandum* to be competent to all heirs that may be charged ; and without considering the import of the clauses, sustained process at the pursuer's instance.

*Harcarse, (EXHIBITION.) No 490. p. 135.*

1707. March 20.

JANET BUCHANAN, LADY LENY, and her Husband, for his interest, *against*  
The MARQUIS of MONTROSE.

No 8.

An apparent heir in a process *ad deliberandum*, cannot insist to have the writs exhibited transumed.

IN the exhibition *ad deliberandum* at the instance of the Lady Leny, as apparent heir to John Buchanan of that ilk her father, against the Marquis of Montrose, the defender having exhibited certain writs, the pursuer craved to be allowed to take a transumpt upon her own charges of such of them as she had a peculiar interest in, and contained clauses in her favour.

*Alleged* for the defender, He was not obliged to allow transumpt of his own writs in an action *ad deliberandum*, which only tends to inspection ; for to transume is much the same with giving up the papers, and inconsistent with a *deliberandum* ; seeing intromission with writs is *ipso facto* behaviour as heir, and intromitting with transumpt thereof is equivalent ; *2do*, The pursuer cannot have transumpt without an active title as heir ; and though she were served heir, the defender could exclude her interest by a preferable right.

*Answered* for the pursuer, It is not only usual to pursue actions of transumpt, but the Lords have frequently allowed transumpt *incidenter* in other actions, when writs were produced that were common evidents, or wherein parties had special interest ; and the pursuer's summons *ad deliberandum* contains a conclusion for transuming such writs as she has interest in, and the act thereupon extracted bears, that transumpt of such writs should be given her upon her own charges.

THE LORDS found, That an apparent heir cannot, in a process *ad deliberandum*, insist to have the writs exhibited transumed ; and therefore refused to allow transumpt to the pursuer.

*Forbes, p. 159.*

1714. February 10.

DAVID CRAWFURD *against* MARGARET CRAWFURD, Sister to the deceased  
ANDREW CRAWFURD of Crawfordstoun, and ANDREW CRAWFURD, now of  
Crawfordstoun, her Son.

No 9.

Exhibition *ad deliberandum* is competent to all kinds of heirs, male and of tailzie,

DAVID CRAWFURD having, as apparent heir male to Andrew Crawford of Crawfordstoun, pursued an exhibition *ad deliberandum* against Margaret Crawford, and Andrew Crawford her son, and called for production of the said de-