

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 Crawfurdstoun, and ANDREW CRAWFURD, now of  
Crawfurdstoun, 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 Crawfurdstoun, pursued an exhibition *ad deliberandum* against Margaret Crawford, and Andrew Crawford her son, and called for production of the said de-