

authority of Voet, it cannot be opposed to what is already mentioned, specially in point of our form. Besides, that *gestio pro herede* by the civil law, is not only a passive but an active title, and equivalent to actual entry; for with them an heir *adit hæreditatem, non solum preferendo se hæredem esse, sed etiam si facto aliquo tandem voluntatem declaraverit*. To the *third replied*, That seeing law gives apparent heirs this benefit, they ought also to have the necessary means thereof, by inspection, not only of the benefit, but also of the burden that may affect their predecessor's estate, that so they may deliberate; and this end can never be attained, unless all writs which may infer a liquid ground of debt be produced. And it must be acknowledged, that ordinarily the greatest part of any man's debts are owing to persons out of the family; nor can there any reason be assigned of the difference, since the heir, if he enter, will be equally liable to both debts *extra* and *intra familiam*. And so the LORDS, by the current of decisions, have sustained this action against persons out of the family, as well those within it.

No 10.

THE LORDS adhered to the Ordinary's interlocutor, with this alteration, that they found the defenders, though not being in *familia defuncti*, ought to exhibit all writs in their hands, whether infestment has followed thereon or not.

Act. Fleming

Alt. Ro. Gordon.

Clerk, Robertson.

Fol. Dic. v. 1. p. 283. Bruce, No 112. p. 138.

1721. January.

RICHARDSON against LIVINGSTON.

No 11.

AN adjudication being led *contra hæreditatem jacentem* upon the apparent heir's renunciation, it was *argued*, That the apparent heir afterwards resolving to enter, could not have exhibition *ad deliberandum* against the adjudger, because the renunciation was a virtual approbation of the adjudger's diligence. *Answered*, There is no presumption when one renounces, that he does it in any other view than to save himself from being liable; and, when he afterwards proposes to enter, there is the same reason he have an exhibition *ad deliberandum* against the adjudger as any other. THE LORDS refused the action *ad deliberandum* in this case. See APPENDIX.

Fol. Dic. v. 1. p. 283.

1770. January 20.

JAMES BOYD against WILLIAM GIBB.

No 12.

JAMES BOYD intending a challenge of Gibb's right to the estate of Pitkindie, brought a process of exhibition *ad deliberandum*; when it was *objected*, That though an apparent heir was entitled to bring such an action without any proof as to his relationship, yet as, according to the pursuer's own theory, he was a

In a process of exhibition *ad deliberandum* by a relation claiming under a remote ances-