

1787. January 24. JOHN ADAIR *against* ROBINA and JEAN ADAIRS.

EXHIBITION—

Ad deliberandum, competent on the title of apparenry, in an heir-male.

[*Fac. Coll. IX. 464; Dict. 3992.*]

JUSTICE-CLERK. The very purpose of an action *ad deliberandum*, is, that a man may know whether he ought to enter, and to what?

ESK GROVE. Propinquity must be proved: there is no occasion for a service: on the contrary, the purpose of the action *ad deliberandum*, is to learn the *commoda* and the *incommoda* of the succession. The service to the heirs of line does not exclude the heirs-male.

PRESIDENT. The heir of line is safe, for the heir-male can only demand exhibition of what is devised to heirs-male.

On the 24th January 1787, "The Lords found that the pursuer has sufficiently proved his propinquity, and therefore sustained his title to insist in this action;" adhering to the interlocutor of Lord Justice-Clerk, Ordinary.

Act. G. Wallace. Alt. G. Ferguson.

1787. January 31. JOHN BUCHAN and OTHERS *against* JAMES ROBERTSON BARCLAY.

PRESCRIPTION.

The sexennial prescription of bills of exchange not obviated by a relative writing of equal date with the bill itself.

[*Faculty Collection, IX. 467; Dictionary, 11,128.*]

MONBODDO. I should think that the oath of the bankrupt may be taken.

JUSTICE-CLERK. "Resting owing" may be proved by oath of party: it would be hard were bankruptcy to take away the mode of proving.

HAILES. [This opinion not delivered because the Court seemed at one.] In the modern practice of Scotland, the presumption is in favour of every person called as a witness. In the last century, indeed, we hear of witnesses *omni exceptione majores*, because they were noble or because they were rich. If the debts are good, even in the opinion of Mr Robertson, and if he has a reversion, the petitioners will obtain payment from *him* as from a solvent person: but here we must suppose Mr Robertson to be insolvent; and the question is, Whether an