

No 1. found the conquest, was of the law of the books of majesty, where it is treatit of the nature of conquest, the whilk were only meant as the express words of the same buir of them *qui habentes terras sive tenementa*, and so could not be extended to writs, such as obligations, contracts, and reversions. To the quhilk it was *answered*, that reversions being heritable, behoved to be ruled according to the nature of the infestments, whilk are heritable titles, and as it was practised of before betwixt the executors of Mr Andrew Herriot and the executors of John Fairlie, in the whilk decision it was fund that the law of conquest aught to have place in sicklike titles, and might be extended to heritable contracts, bonds, and obligations, and where any thing was destinat to any heritable use. THE LORDS, after long reasoning, found that the said reversion aught to be repute and holden as conquest, and so the airs of conquest had good action to purseu for deliverance of the same, as appertaining to them be reason of conquest. *Nonnulli in contraria fuerunt opinione.*

Fol. Dic. v. I. p. 283. Colvil, MS. p. 433.

1626. July 1.

NISBET against WHITELAW.

No 2.
Exhibition ad
deliberandum
may be pur-
sued after the
annus delibe-
randi.

ONE Whitelaw, being pursued at the instance of Mr Patrick Nisbet and his bairns begotten upon his wife, daughter to Mr John Arthur, for exhibition of certain writs and bonds, pertaining to the said Mr John, and which they desired to be produced and delivered to them, to the effect that they might advise and deliberate, if they would enter heirs to their said umquhile grand-father, or not; in this pursuit the defenders compearing, *alleged*, that this pursuit, for delivery of evidents to the pursuer, to the effect she might advise, if she would enter heir, ought not to be sustained, because albeit an apparent heir might call for production of writs, yet the delivery thereof, or decret being given for delivery, makes the pursuer heir; so that the craving of the writs to be delivered *ad hunc effectum*, viz. to advise, if she would enter heir, ought not to be sustained. This allegiance was repelled against the inhibition, and the pursuit was sustained by the LORDS, to crave the production, to the foresaid effect, albeit it was year and day past, since Mr John Arthur's decease, whereby the defenders alleged, that the pursuer could not crave exhibition, for the foresaid effect, to deliberate, seeing the time given by the law to advise was expired; and in respect whereof she could not pursue, but to the effect that she might enter heir, which was repelled as said is, against the exhibition, but was reserved after the evidents were produced, to be disputed against the delivery thereof.

Act. Stuart.

Alt. Hope.

Clerk, Hay

Vide July 26, 1626, betwixt the same parties, *voce* REDUCTION.

The like was thereafter sustained. July 18, 1626. Innes *contra* —, where the Lords sustained the pursuit, for exhibition, for the same effect, the pursuer being major.

No 2.

For the Defender, *Hope*.Clerk, *Hay*.*Fol. Dic. v. 1. p. 283. Durie, 206.*

1675. January 8.

WAIRD against WAIRD.

MARION WAIRD pursues an exhibition of writs granted by one James and William Wairds, to whom she is apparent heir, and thereupon obtained decret before the magistrates of Stirling, which being suspended, the suspender insisted on these reasons, *imo*, That the charger hath renounced to be heir. *2do*, That she hath emixt herself with the defunct's estate, by granting bond, whereupon the same is adjudged from herself, and so *res non est integra*, she cannot deliberate, and ought not to put the defender to the trouble to produce these writs to her. It was *answered*, That the renunciation to be heir was only in favours of one creditor, and is not general, and may be satisfied, and doth neither hinder the pursuer to enter, or deliberate; and for the alleged emixation, it is not relevant to stop exhibition, neither hath the pursuer possessed thereby, and if it were true, may renounce the same.

No 3.
Exhibition *ad deliberandum* was not elided because the pursuer had renounced to be heir, in favour of a creditor, or because he had granted a bond, whereupon the heritage was adjudged from him.

THE LORDS repelled the reasons, and sustained the exhibition.

Fol. Dic. v. 1. p. 283. Stair, v. 2, p. 303.

*** Gosford reports the same case :

MARION WAIRD as apparent heir to James and William Waird her uncles, having obtained a decret against Margaret Waird and James Trumble her son, in an exhibition *ad deliberandum*, there was suspension raised upon these reasons; *imo*, That she had renounced to be heir, whereupon an adjudication was obtained at the instance of a creditor of her uncles; *2do*, She had behaved herself as heir, by intromitting with moveable heirship, and the mails and duties of lands, and so could not charge for exhibition of any writs unless she were heir served and retoured. It was *answered* to the first, that an apparent heir being charged to enter, may renounce, *quoad* that creditor at whose instance she is charged, which will be a good ground of adjudication, but will not hinder to pursue an exhibition *ad deliberandum*, to the effect that she may know the whole condition of the estate, and thereafter enter or not enter as she thinks fit. It was *answered* to the second, that an apparent heir's intromitting with moveable heirship or rents, cannot preclude them from pursuing an exhibition.