

It was then *alleged*, That the legitimation denuded and excluded, the King not only giving power to the bastard to make testament, but to dispoise of his heritable rights, even on death-bed. It was *answered*, That whatever the stile of such gifts be, they are never extended to heritable rights, but only to a faculty to make testament, which bastards want by the law: but if the bastard made no testament, and did exhaust his moveables by universal or particular legacies, the executor nominate could only have the third, which follows the office, and the King would have the rest of the inventory not exhausted. *2dly*, All general declarators being summary, these debates are only competent in the special declarator.

THE LORDS repelled the defence *hoc loco*, and reserved the same to the special declarator.

*Fol. Dic. v. 1. p. 177. Stair, v. 1. p. 609.*

No 87.

1673. February 3.

RIDDOCH against STUART.

JOHN RIDDOCH, as apparent heir to his good-sire, pursues an exhibition *ad deliberandum*, against Robert Stuart, who having proponed a defence, that the good-sire was denuded by a disposition in favours of the defender's author, and that he was obliged to produce no further than that disposition; that defence was repelled in respect of this reply, That the defender's author being the good-sire's second son, all rights made to him without exception ought to be exhibit, albeit real rights made to strangers were not to be exhibit *ad deliberandum*, under that pretence, to open all men's charter-chests. The defender now further *alleged*, That the pursuer could not now deliberate, because he had immixt himself by disposing the heritage.

THE LORDS refused to sustain this allegiance against the exhibition, unless it were instantly verified, and would not suffer a course of probation to run to stop an exhibition only *ad deliberandum*.

*Fol. Dic. v. 1. p. 177. Stair, v. 2. p. 164.*

No 88.

An exhibition *ad deliberandum*, pursued by an apparent heir, was sustained notwithstanding the defender offered to prove behaviour, unless the defence were instantly verified; for, the Lords will not allow a course of probation to stop an action of this nature.

1685. November.

NISBETS against SMITHS.

MR. ALEXANDER HERRIOT having granted a disposition of his lands of Brockhouse, to Agnes Nisbet his wife, and she having pursued Isobel and Esther Smiths, as representing the said Mr. Alexander their uncle, upon the passive titles, for fulfilling of the disposition; *alleged* for the defenders, That they could not be obliged to fulfil, because the disposition was granted by the said Mr. Alexander upon death-bed, upon which they had raised a reduction, which they now repeated. *Answered*, That the pursuer being in course of diligence for completing of her right, it cannot be stopt upon any such reduction, where-

No 89.

A disposition of lands being granted without procuratory or precept; in a process against the heirs of the granter, for fulfilling the obligation