

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 decreet 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 decreet 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.

- No 3. *ad deliberandum*, because exhibitions for that effect are favourable, and can prejudice no creditor. THE LORDS did repel both the defences, and sustained the summons for exhibition *ad deliberandum*, which seems hard as to the second allegiance of a mixtion with the defunct's heirship; the reason for granting summons for the exhibition *ad deliberandum* to apparent heirs, being chiefly founded upon that principle that *res est integra* by their abstaining from meddling, whereas by a mixtion and intromission, which infers a passive title, they ought not to deserve that favour, but should be forced to enter heir, that lawful creditors be not involved in pleas whereof the event is uncertain.

Gosford, MS. No 732, p. 449.

No 4.
An apparent heir was allowed the custody of the writs of which he had obtained exhibition *ad deliberandum*.

1675. February 16. RATRAW against —

AN apparent heir having, upon an exhibition pursued by him to the effect he might advise whether he would be heir, obtained the writs to be exhibited in the clerk's hands; did thereafter upon a bill desire the samens to be delivered, pretending that he had use for the writs for serving himself heir; and no other person could have any interest for keeping them but himself.

THE LORDS granted the desire of the bill; albeit some of the LORDS thought, that the writs could not be delivered to him, unless he were heir, but only such as he should have use of for his service upon a ticket to the clerk to re-deliver the same, if he should not be served heir within a certain time; and that the creditors had interest, seeing the apparent heir, if he should resolve not to be heir, might embezzle and put the writs out of the way, in prejudice of compromisers.

Dirleton, No 258, p. 125.

No 5. 1684. February 25. SCOT against FORREST.

IN the action of exhibition *ad deliberandum*, pursued at the instance of Scot against Forrest, it being alleged for the defender, that the pursuer, being only heir of provision, could not pursue an exhibition *ad deliberandum*, it being only competent to the apparent heir of line;—THE LORDS sustained process at the pursuer's instance, albeit heir of provision.

Fol. Dic. v. i. p. 283. P. Falconer, No 86, p. 59.

* * * This case is reported by Harcarse, *voce* INDUCLÆ LEGALES.