

1684. *March.* LADY YESTER *against* DUTCHESS OF LAUDERDALE.

IN an exhibition *ad deliberandum*, at the instance of the Lady Yester, against the Dutchess of Lauderdale, of bonds granted to the Duke, and in the defender's custody;

*Alleged* for the defender, That she had a disposition and assignation to all sums of money belonging to the Duke, and consequently *nomina debitorum*.

*Answered*, By sums of money nothing can be understood but sums lying by the defunct in specie.

THE LORDS, before answer to the import of the clause, ordained the defender to exhibit *ad deliberandum*.

*March* 1685.—The Lady Yester having insisted in the exhibition, it was *alleged* for the defender, That the pursuer having granted a bond to found a real diligence against her father's estate, and being charged thereon, and renouncing, she ought not to have inspection; for this is not like the renunciation of an apparent heir charged by a creditor.

*Answered*, That an apparent heir renouncing to one, may either renounce to another, or enter heir in obedience to the charge, and so may deliberate about entering, and ought to have inspection. Again, apparent heirs granting of bonds to adjudge their predecessor's estate upon, infers no passive, unless they come to possess, or intromit by virtue of the right, as is clear from the act of sederunt.

THE LORDS found the defender ought to make a term in the exhibition.

*Harcarse*, (EXHIBITION.) No 483. p. 132.

1686. *March.* LORD CALLENDAR *against* DUKE OF HAMILTON.

IN an exhibition *ad deliberandum*, raised by my Lord Callendar, against the Duke of Hamilton;

*Alleged* for the defender, That such actions are only competent to heirs of line, and not to heirs of tailzie; *2do*, The defunct was denuded by a disposition to Lord John Hamilton, which the pursuer, an apparent heir of tailzie, cannot quarrel.

*Answered*, The action *ad deliberandum* is competent to all heirs who may be charged; *2do*, The pursuer hath interest to call for the disposition, seeing it may contain clauses or conditions that may concern him; and when an heritor of a tailzied estate doth any deed contrary to the tailzie, the succeeding heir of tailzie may quarrel the same.

*Replied*, The tailzie contains no irritancies in case of failzie and contravention, but only obligations in favour of the heirs, whereof they cannot quarrel the contravention.

No 6.

A party held a general disposition, alleging it conveyed only *nomina debitorum*, and therefore exhibition *ad deliberandum* was not competent. Found obliged to exhibit before answer as to import of the deed.

No 7.

Action *ad deliberandum* competent to all heirs who may be charged, whether of line, tailzie, or others.