

1684. February.

FORREST against SCOT.

No 34.

FOUND that an apparent heir of provision might pursue an exhibition *ad deliberandum active*, and had the benefit of the *annus deliberandi* when pursued *passive*.

Fol. Dic. v. 1. p. 467. Harcarse, (EXHIBITION.) No 488. p. 134.

* * * Sir P. Home reports this case :

IN an action of exhibition *ad deliberandum*, at the instance of James Forrest against — Scot, it being *alleged* for the defender, That the pursuer being heir of provision, could not pursue an action *ad deliberandum*, which was only competent to the apparent heir of line, the LORDS repelled the defence, and sustained the process *ad deliberandum* at the instance of the heir of provision.

Sir P. Home, MS. v. 1. No 608.

* * * See P. Falconer's report of this case, No 5. p. 3984.

1702. December 4.

JANET PITCAIRN against ROBERT WALWOOD.

No 35.
Poinding of
the ground
may be pur-
sued *intra an-
num deliberan-
di*.

JANET PITCAIRN, relict of William Walwood of Touch, being infest in a life-rent annuity of 1000 merks *per annum*, pursues a poinding of the ground against the tenants, and Robert Walwood, now apparent heir to the fiar, her husband; who *alleged*, No process against him till his *annus deliberandi* expire. *Answered*, In pursuits for personal debts a year is allowed to deliberate, but in actions *contra fundum*, where the ground is principally debtor, and the heir only called *pro more*, it was never pretended; and at this rate liferenters might be delayed from their jointures a whole year after their husband's death, and the heir might as well plead an *annus deliberandi* as here; or what if a stranger come to be heritor of the lands craved to be pointed, shall he have a year to deliberate? And there is no charge here to enter heir, and therefore no deliberation; and it was so found in real actions, 2d January 1667, Oliphant *contra* Hamilton, No 6. p. 2171. *Replied*, *Quorsum* is the heritor called if he may not propone a defence without the hazard of incurring a passive title? and a delarator was not sustained against an apparent heir within his years of deliberation, 26th June 1667, Dewar against Paterson, No 31. p. 6873., only, that it was in a count and reckoning, and not in a poinding of the ground. THE LORDS found the *annus deliberandi* took no place in this case.

Fol. Dic. v. 1. p. 468. Fountainhall, v. 2. p. 163.