proof; that they had not employed, but only recommended the agent; and, as to the alleged conversations with other witnesses, these were merely extra-judicial, and there was no proof that any of them had been thereby either instructed or influenced. No 12.

The deposition of these two witnesses having been sealed up, the LORD ORDINARY 'Repelled the objections, and ordained the seals to be taken off,' To which interlocutor, upon advising a petition and answers, the LORDS adhered.

Lord Ordinary, *Strichen.* For Boyd, *Lockhart.* For Gibb, *Macqueen.*
Clerk, *Campbell.*

R. H. *Fac. Col. No* 13. *p.* 29.

1779. *January* 12. JOHN M'FARLANE *against* GEORGE BUCHANAN.

No 13.
In an exhibition *ad deliberandum*, a charter of adjudication and infeftment in favour of the defender in possession, are not sufficient to bar the pursuer from insisting for exhibition of the grounds of the charter.

DOUGALD M'FARLANE, proprietor of the lands of Wester Auchendinnan, died in 1730, and, soon after, several of his creditors led adjudications of these lands, *contra hæreditatem jacentem*, James M'Farlane, his apparent heir, having renounced to enter. Upon these adjudications, the creditors entered into possession, and granted a factory to George Buchanan, over the lands, for uplifting the rents. The right to all these adjudications came afterwards into the person of Buchanan; and, in 1761, he obtained a charter of adjudication and confirmation from the subject-superior, on which he was infeft. In 1777, John M'Farlane, the son of James, then deceased, as heir-apparent to his uncle Dougald in the lands of Auchendinnan, brought an action of exhibition, *ad deliberandum*, against Buchanan, concluding for exhibition of the adjudications, and whole other rights in his person, by which he possessed the lands. The defender produced his charter of adjudication and infeftment, and

Pleaded in defence against further exhibition; An action, *ad deliberandum*, from the nature of it, cannot reach farther than to the production of writings relative to subjects *in hæreditate jacente*. It is always a good defence against the exhibition, that the predecessors of the pursuer were denuded; Stair, B. 4. tit. 33. § 7.; Bankton, B. 3. tit. 5. § 7.; and so it was found by the Court, Bruce, February 7. 1680, Fount., No 22. p. 3998. In the present case, the titles produced, show that the lands in question are not *in hæreditate jacente*, but stand vested in the person of the defender. The pursuer's ancestor was denuded, or, what is equivalent, his *hæreditas jacens* was carried off, and the pursuer's right, as heir to his ancestors, barred, with respect to these lands, by the expiry of the legal of the adjudications, which were in the person of the defender, and by the heritable titles which he made up as a singular successor. The defender's charter and infeftment must first be set aside, before the right of apparency in these lands can open to the pursuer, and consequently, before he can have right to call for an exhibition of the adjudications, or other grounds of these titles.

No 13.

But further, the *beneficium deliberandi*, in this case, must be considered as expired, the action being brought at the distance of 47 years from the predecessor's death, and when the right to the subject had long stood vested in a third party.

Answered for the pursuer; Nothing less than the production of an absolute right, totally denuding the pursuer's predecessors, could afford a defence against a full exhibition, to the extent called for by the pursuer. This is established by the authorities on which the defender founds. But the title produced by the defender does not amount to a right of this kind. It is nothing more than a charter of adjudication, which can give no better right to the lands than the adjudications on which it is founded. These adjudications, therefore, are the only titles on which the defender can pretend to hold the lands; but, as they are not secured by a declarator of expiry of the legal, they can give no such absolute right to the property, as the law requires, to bar this action. They may have been extinguished by intromissions within the legal, and subject to a variety of other objections. Accordingly, it was found by the Court, that the production of apprisings, though the legals were expired, were not sufficient to exclude an exhibition *ad deliberandum*, at the instance of the heir; Steel, January 12. 1665, Gilmour, No 19. p. 3997.; Lady Fintray, January 1685, No 24. p. 4000.

Replied for the defender; In the case of Steel, 1665, the apprisings were not completed by charter and infeftment. In the other decision of Lady Fintray, 1685, the question was with regard to an expired apprising against the brother of the pursuer. And the judgment of the Court contained this explanation, 'unless the comprising had been led against the brother, as heir, or lawfully charged to enter heir to his predecessors.'

THE COURT 'ordained George Buchanan to produce the adjudication in his person, with the grounds thereof, and conveyances thereto, and also the factory in virtue of which he uplifted the rents of Wester Auchendinnan.'

Lord Ordinary, *Braxfield.* Act. *Baillie.* Alt. *Ilay Campbell.* Clerk, *Menzies.*
Fol. Dic. v. 3. *p.* 196. *Fac. Col. No* 50. *p.* 89.

1787. *January* 19. JOHN ADAIR *against* ROBINA and JEAN ADAIRS.

No 14.
Exhibition *ad deliberandum*, competent on the title of apparency in an heir-male.

JOHN ADAIR, as heir-male to his brother, insisted in an action of exhibition *ad deliberandum*, against Robina and Jean Adairs, his nieces, who had been served heirs of line to their father; alleging, in general, that the lands which belonged to the deceased had been devised to heirs-male.

Pleaded for the defenders: In order to warrant such an action as the present, some writing or deed must be produced, or particularly condescended on, whereby